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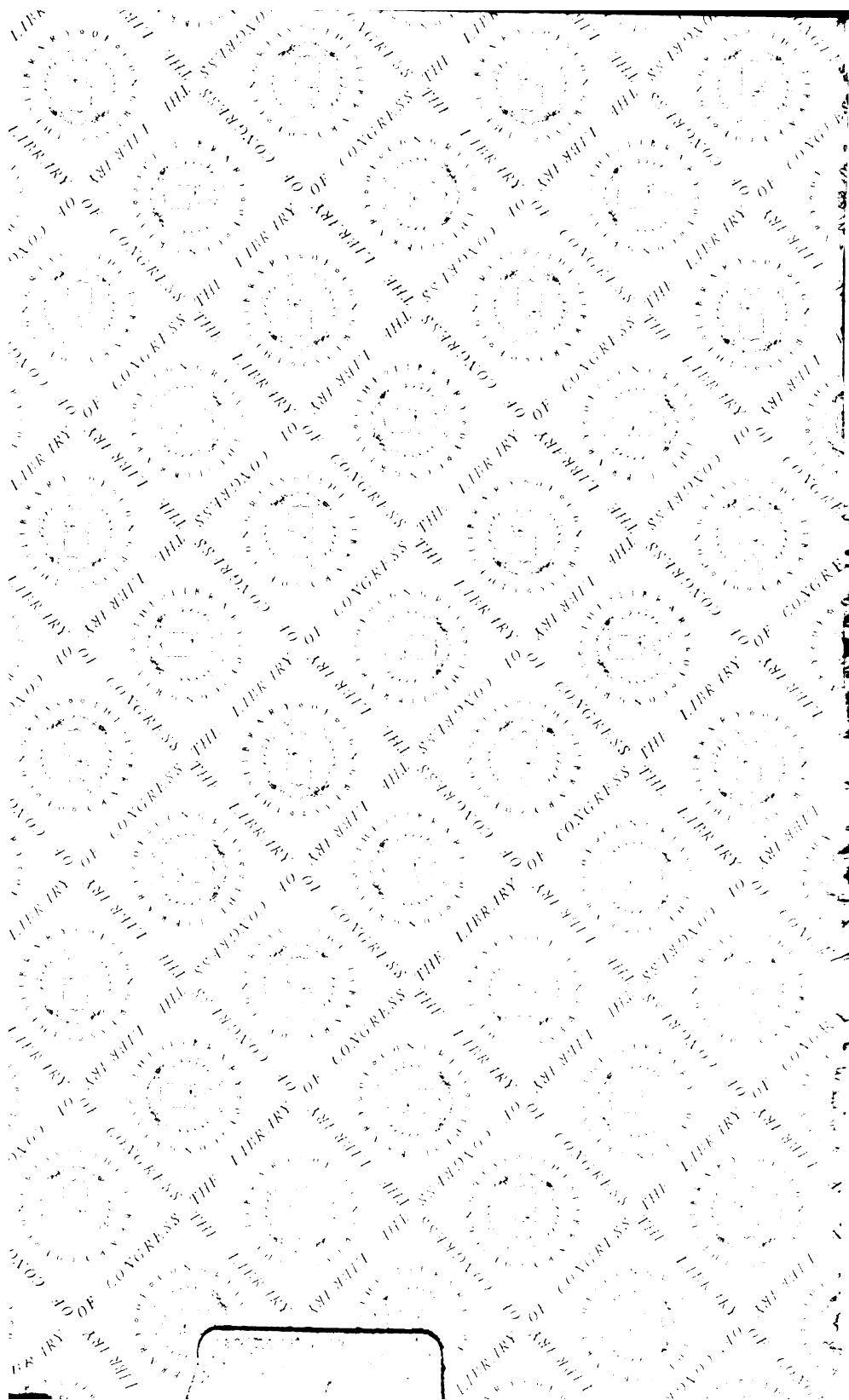
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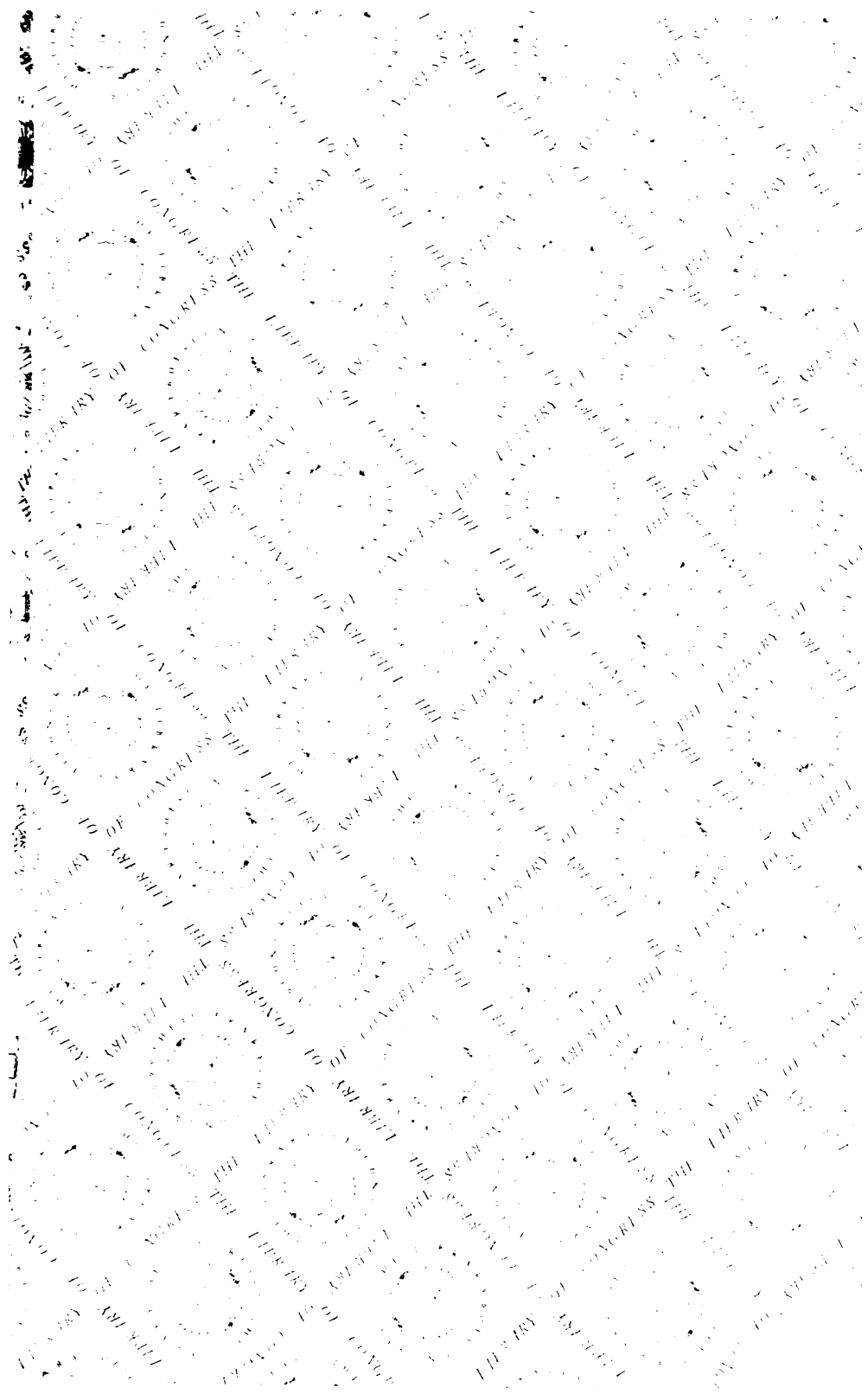
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Interstate Commerce Report - Hearings -
1902.

BEFORE THE

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v.

U.S. Congress. House.

1 COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

THE BILLS TO AMEND THE INTERSTATE COMMERCE LAW
(H. R. 146, 273, 2040, 5775, 8337, AND 10930).



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INTERSTATE-COMMERCE LAW.

TUESDAY, *April 8, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. It has taken some time to dispose of these other matters, but we will now take up the subject of interstate and foreign commerce, and if any gentleman here desires to be heard we will hear him on these bills.

STATEMENT OF MR. E. P. BACON.

The CHAIRMAN. Now, Mr. Bacon, we want to get some idea about the time that will be consumed, and the number of gentlemen who will appear before us, so far as you know. Will you favor the committee with your ideas on that point?

Mr. BACON. I can only give you an indefinite idea with regard to it. There are, perhaps, in all a dozen men, from different parts of the country, whom the committee which I represent expects to be present at these hearings.

The CHAIRMAN. What committee do you represent?

Mr. BACON. I represent the executive committee of the interstate-commerce law convention, which was held at St. Louis on the 20th of November, 1900. That convention was called for the purpose of promoting the passage of the Cullom bill, which was then pending in the Senate, and that bill having failed, this committee prepared a substitute bill, which has been introduced in the House by Representative Corliss and in the Senate by Senator Nelson. I appear in behalf of the committee to advocate the reporting of the bill.

The committee have been in communication with a number of the commercial organizations of the country, and have furnished them with copies of the bill and with a synopsis thereof, with arguments in favor of its passage, and have received responses from a large number of the associations favoring its passage, indorsing the bill and stating that their several associations have adopted resolutions requesting the members of Congress representing their respective districts to give it their support. I have a list of the organizations, which I will give to the reporter, but I will state that it comprises eight national organizations, consisting of grain dealers, millers, manufacturers, and mercantile organizations, the National Lumber Dealers' Association, and, among others, the National Board of Trade. Also 17 State organizations of various States, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri; the New England Granite Manufacturers Association, the New England Shoe Dealers' Association, the Ohio Grain Dealers, the National Millers, the Texas Cattle Raisers Association, the Texas

Millers, the Wisconsin Cheese Makers, the Wisconsin Retail Hardware Dealers, and the Wisconsin Lumber Dealers.

These organizations represent, as you will observe, nearly all of the various branches of trade and manufactures.

Of the local organizations in the various States there are 49, covering 21 States, the States being California, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, and New York, with about 10 associations, North Carolina, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin.

There are numerous organizations which have passed similar resolutions, of which, as chairman of the committee, I have heard incidentally but have not been officially informed, in addition to these that are mentioned, which aggregate in all 74.

I will say, also, that the States of Minnesota and Iowa have passed resolutions recommending the passage of the bill during the past winter, and during the previous winter the States of Michigan, Wisconsin, Kansas, Louisiana, and South Dakota—the legislatures of those States—passed resolutions recommending the passage of the Cullom bill, then pending in the Senate, the principal provisions of which coincide with those contained in this bill.

The CHAIRMAN. Now, what is the objection that you find in the present legislation, and what are the remedies which you propose? State them briefly to the committee, if you please.

Mr. BACON. The brief time which remains this morning will hardly afford opportunity to go into the merits of the bill.

The CHAIRMAN. We propose to continue these hearings right along, every day, and that will give you an opportunity to finish.

Mr. BACON. It will be very difficult, in the fifteen minutes now remaining, to give even a comprehensive idea of the difficulties and the reasons for the enactment of this bill. I, however, at a subsequent meeting, will take that up definitely and concisely with the committee. At this time I think that I will only present the public demand which exists for this legislation.

The convention of which I speak appointed this committee for the purpose of promoting this legislation, or, originally, promoting the passage of the Cullom bill. That bill was far more comprehensive, far more drastic, than the bill which has been framed by this committee. The committee in considering and framing a new bill aimed to provide only for two or three vital matters that are necessary to give effectiveness to the present act, leaving minor details to future action, and concentrating all efforts upon these two or three vital provisions, without which, in the opinion of the committee, the present act is almost worthless.

The provisions which are referred to are, in the first place, the giving of the Commission specific authority to prescribe the proper rate to be enforced in the future, when, after full investigation, upon a formal complaint, it finds, after hearing all parties in interest, the existing rate or practice is unjust or unreasonable. That is the primary provision of this bill.

And the second provision, which is considered of equal importance, however, is that the rulings and decisions of the Commission shall be immediately operative, and shall so continue until overruled by the courts, or at least that they shall be operative at a time fixed in the

order of the Commission unless appeal is taken to the courts, and in that case their operation is suspended for thirty days, and if, upon examination of the record, the court is satisfied that the decision of the commissioner proceeds upon an error of law, or is unreasonable upon the facts, it may suspend the operation of such decision during the pendency of the proceedings. In any case, however, the order of the Commission, it is intended, shall be immediately operative.

The reason, the necessity for that, arises from the fact that under the present law the operation of the order of the Commission is suspended until it has passed through various stages of litigation which, according to the statements of the Interstate Commerce Commission, has averaged in the various cases which have been taken before the courts a period of four years. It is evident to anyone familiar with traffic affairs that when a rate or practice has been found unjust or unreasonable by a competent body, such as we believe the Interstate Commerce Commission to be, if that action has to be suspended for a period of four years, or even for a period of two years or one year, the occasion has passed by for deriving any benefit from the action of the Commission, and it practically nullifies whatever action the Commission may take. It suspends its action for such a period of time that it is entirely valueless.

Mr. ADAMSON. You wish to authorize and require the Commission at a certain stage of the investigation to prescribe rates?

Mr. BACON. Yes, sir; and that stage is after a complete investigation.

Mr. ADAMSON. At some point you want them to fix rates?

Mr. BACON. Yes, sir. The term "fix rates," however, is hardly correct. We should say to revise the rates, to correct the rates, to prescribe the rate in a particular case which is to be enforced in the future.

Mr. ADAMSON. You want to fix the rates which they agree upon and conclude this rate?

Mr. BACON. Yes, sir; to be sure, in that particular case. Their authority in this bill in that direction is limited to the particular case in question, and can only be exercised in case of a formal complaint having been filed.

Mr. ADAMSON. Do you think that the Government of its own motion, arbitrarily, without requests from railroad companies, can justly fix rates and still escape responsibility for any results, for any loss that results?

Mr. BACON. I do not quite catch your question.

Mr. ADAMSON. If the Government arbitrarily assumes to fix the rates of the railroad corporations, quasi public corporations, do you think the Government can do that and still escape the responsibility if a loss results to the company?

Mr. BACON. We do not propose to have the Government fix the rate arbitrarily. We propose simply to have that provision in regard to the rates in the case of a complaint by the injured party. It is put before the Commission and the case considered. The testimony of both sides is taken, and they pass upon that rate as to whether it is reasonable and just or not, and, having passed upon it in respect to the past, then they shall proceed further and say what would be in their judgment a reasonable and just rate for the future.

Mr. ADAMSON. If the parties do not request it or consent to it, then would not the action of the Government be arbitrary?

Mr. BACON. Not at all; any further than it might be said that the action of any court is arbitrary. The Commission is a tribunal before which both parties appear, each presenting its own case. The shipper—

Mr. ADAMSON. It is not unusual in any court of this country, is it, for the court to undertake to decide what rates shall prevail with any company or private party for the use of their property?

Mr. BACON. The court, as I understand, has not the power to prescribe a rate for the future. The power of determining the rate is lodged in the legislative body. The Commission is a body organized by the legislative body for the purpose of exercising that function. It is beyond the power of the court to fix a rate.

Mr. ADAMSON. You have no trouble about the proposition as to the power to clothe the Commission with judicial powers? You are willing to that?

Mr. BACON. It can hardly be called a judicial power. Judicial power does not permit of the fixing of a rate in the future. The power to fix a rate is a legislative power, and the only remedy—

Mr. ADAMSON. The Commission would have to exercise judicial power in the precedent investigation before fixing the rate?

Mr. BACON. Not judicial power. It comes through the investigation in a judicial manner and in judicial form, but the Commission is not a judicial body and has no judicial powers conferred upon it, and we do not propose to confer any upon it. We propose, simply, to clothe it with power which will enable it to protect the public in the case of the rates being found unreasonable or discriminative, not only against the continuance of that rate, but also to prescribe what rate shall be substituted for it in the future. That is a legislative act, or an administrative act, I should say.

Mr. MANN. Now, on that point, your idea is that the Commission should have the power to fix a rate which should be enforced until the courts determined otherwise?

Mr. BACON. That is the proposition.

Mr. MANN. Do you think the legislature anywhere has that power to prescribe a rate for railroads which must be accepted by the railroads until the courts determine it is illegal?

Mr. BACON. That right has been affirmed repeatedly by the courts within the last twenty years.

Mr. MANN. I think to the contrary.

Mr. BACON. Yes, sir; according to my information.

Mr. MANN. They can fix the rates, but the railroads have a right to appeal to the courts at once.

Mr. BACON. They have a right to appeal to the courts, and so they have under our proposition.

Mr. MANN. Under your proposition they have got to accept the decision of the Interstate Commerce Commission.

Mr. BACON. Temporarily, while it is pending.

Mr. MANN. You say it makes it of effect. They have to accept the decision of the Interstate Commerce Commission for, say, four years time.

Mr. BACON. No, sir. The carrier has a right to proceed immediately to obtain a reversal of the Commission.

Mr. MANN. Through the Supreme Court of the United States, which you say requires on the average about four years' time to obtain a decision from.

Mr. BACON. Yes, sir; that has been the case heretofore; but it is generally understood that those cases have been delayed purposely by the carriers, for the reason that as long as they could continue the existing rates in force, the act of the Commission being inoperative, they could derive the benefits as long as they could keep the case in the court.

Now, under the proposed amendments it would be to the interest of the carriers to expedite the adjudication of the case, and it is altogether probable that it would not take so long a time, four years, and probably not more than one year, to reach a result.

Mr. ADAMSON. What procedure do you suggest in case of an erroneous rate? Do you propose the other courts attacking this Commission, or do you propose an appellate jurisdiction?

Mr. BACON. It is an appellate procedure. That is, the carrier if it is dissatisfied with the rates shall appeal it to the circuit court.

Mr. ADAMSON. From the Commission to the circuit court?

Mr. BACON. From the Commission to the circuit court.

Mr. COOMBS. Now, let me ask you this question: Supposing, for the sake of argument, that the Commission promulgated an order of some kind, and supposing that it was radically wrong. Now, the railroads would have to abide by that until they could get a judicial determination of it. Now, would that not, conceding that it was wrong, and conceding that they were compelled to do it, pending the decision of court, would that not be an invasion of their rights under the Constitution and under the laws of this country?

Mr. BACON. The presumption is altogether in favor of the correctness of the decision of the Commission.

Mr. COOMBS. No; I am not talking about the presumption. I am talking about this—

Mr. BACON. Excuse me. I will lead up to the reply to that question.

Mr. COOMBS. Yes.

Mr. BACON. The Commission consists of men who are expert in traffic matters—men who have become expert from experience. The members are appointed for the period of six years, but the practice has been to reappoint them from term to term, so that the body becomes practically as permanent a one as the Supreme Court of the United States, or very nearly so.

And it requires such knowledge, intimate knowledge, of traffic affairs and the intricacies of rate making, that after it has given a hearing to both parties, and that hearing, by the way, is always a protracted one and every one appears who is in any way interested in the question, and the rate is investigated in every way, in its relation to other points, and everything related to it in any way is investigated, and, as I say, the presumption is ten to one that the decision is correct; and while there may appear to be a little injustice in making that decision immediately operative, while its correctness is pending in the courts, on the other side, you can see that the injury or wrong coming from the suspension of the orders of the Commission is infinitely greater than any wrong that can be sustained from any probable error of the Commission in fixing the rates.

There is a balance, a balance of results, and it is fair to the public and fair to the railway company that that balance should be considered and the preponderating wrong and injustice which is continued and enforced while these cases are held in court is infinitely greater than

the slight loss which may, in one case in a hundred, possibly, result from the orders on the part of the Commission.

Mr. RICHARDSON. You admit that the rule which it prescribes reverses the rule which prevails in all the courts of this country?

Mr. BACON. I admit that, and I will say in reply to that, that the circumstances are entirely different.

Mr. MANN. Before you are through with your argument I hope you will address yourself to the power of the legislative body to say that the court shall not exercise its authority at a preliminary hearing—as to whether the legislative body has the power to fix a rate and to say that rate shall be observed until the final decision of the Supreme Court of the United States overrules entirely the theory of the judicial power that has the right to issue an injunction against an improper rate.

Mr. BACON. I can cite you decisions showing beyond doubt that the power rests with the legislative body; but, as you suggest, there is opportunity of appeal from one court to another until it is finally decided by the Supreme Court.

Mr. MANN. If you can find any decision to the effect that the legislature of a State can fix a rate, and that that must be observed until the Supreme Court of the United States says otherwise, I would be very glad to see it.

Mr. BACON. There is a question of the rights of the people—

Mr. COOMBS. One individual is the people. Now, you take judgment against John Doe. John Doe appeals, and that judgment is challenged. Now, are you going to provide a law for the execution of that judgment pending the appeal which he may take?

Mr. BACON. That brings me to the question which this gentleman put. In case of business transactions which come before the court there are two parties to the transaction, and those two parties are the only ones interested, and each may protect himself in the case of an appeal by filing a proper bond, and the final decision of the court will be carried out in that individual case.

Mr. ADAMSON. You propose to carry it out pending the appeal?

Mr. BACON. Excuse me, it will be carried out in that particular case, and the two parties, who are the only ones interested, will get justice.

In the case of the railroads the party, the man, who bears the freight ultimately is not the one who pays it. The one who pays it is a middle man, and he distributes that between forty or fifty or one hundred individuals who are not known and who can not be reached, and who are really the parties in interest. That fact renders it necessary that there shall be special legislation protecting these parties who are the real sufferers and can not protect themselves, who have no standing in court, and must continue paying these excessive charges, charges found to be excessive by a competent body, from year to year, until the final result is reached.

The CHAIRMAN. The time for adjournment of the committee has arrived.

Mr. BACON. I should be very glad to continue at the next hearing.

The CHAIRMAN. Very well.

Thereupon, at 12 o'clock meridian, the committee adjourned until to-morrow, Wednesday, April 9, 1902, at 10.30 o'clock a. m.

WEDNESDAY, *April 9, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. E. P. BACON—Continued.

The CHAIRMAN. The committee will be glad to have you proceed, Mr. Bacon.

MR. BACON. Mr. Chairman, I wish to state before proceeding that the convention which I have the honor to represent consisted of delegates from various commercial organizations from different parts of the country—41 in number—business men representing various branches of business; and I will state, also, as to my personal position, that I am simply a business man and was a delegate at that convention, representing the Milwaukee Chamber of Commerce.

I endeavored yesterday to answer a few questions of a legal nature, which I did from the information which I have obtained from a somewhat careful observation of the workings of the interstate-commerce act since its enactment and some of the important cases that have been adjudicated under that act.

I will say that the constitutional questions which have been brought up were treated at some length before the Senate committee two years ago, when the Cullom bill was before that committee, by Judge Cowan, from Texas, and his discussion of the matter will be found in the report of the hearings before that committee, which I will file for the information of this committee.

The question that was asked, and not fully answered at the time of my closing yesterday, was in relation to a legislative act being effective in relation to rates prior to its confirmation by the courts. I personally answered the question, but wish further to say in connection with it that, as I understand, the State laws in relation to transportation and the fixing of rates are immediately effective, as I believe all legislative acts are; the carriers, however, having the privilege, having the right, of suspending the operation of the law by obtaining a writ of injunction and proceeding in the courts to test its constitutionality. That, I think, is very similar to the position in the matter of the fixing of rates by the Interstate Commerce Commission, as proposed in the bill which has been introduced through the instrumentality of the committee which I represent, called the Corliss bill, in the House.

Although in terms the rulings of the Commission are made effective, as I stated yesterday, except as being suspended for thirty days in case of review by the circuit court, yet the carriers would have the same privilege under that provision of instituting legal proceedings in their behalf and suspending the operation of the ruling of the Commission by means of an injunction in the same manner in which the carriers in the individual States under the laws relating to the State commissions proceed.

I wish to call the attention of the committee to the report of the Industrial Commission on transportation, which was presented in the month of February, I believe, a Commission which, as you all know, was organized by Congress, consisting of four members of the two Houses of Congress and ten citizens who were appointed by the President to complete the Commission, making a Commission of eighteen in

number. That Commission has been between three and four years engaged in a thorough investigation—

The CHAIRMAN. The committee are familiar with that.

Mr. BACON. Yes, sir. And the report which it made was signed by 16 of the 18 members of the Commission; and I would like, from the fact that its recommendations made to the committee coincide to a large extent with the provisions of the bill which is under consideration, to read the recommendations made by the Commission in relation thereto. It states in its report on transportation:

To the end that discrimination and inequality as between shippers, and maladjustment of freight rates between competing markets and trade centers may be abolished or minimized; that the public may be assured of reasonable and stable freight rates, which will at the same time afford fair returns upon capital invested, etc., we recommend:

1. That the policy of governmental supervision and control of railroads as originally laid down in the Senate committee report of 1886, and embodied the following year in the interstate-commerce act, be revived and strengthened; that the authority of the Interstate Commerce Commission necessary for the adequate protection of shippers, and clearly intended by the framers of the law, be restored, etc. Specifically, such legislation should provide—

That strict adherence to published tariffs be required and rebates or discriminations prevented by an increase of the penalties therefor. These penalties should be not only against the person who gives but also against the one who accepts discrimination in any form whatsoever. Corporations should be made liable, the same as individuals. Provisions for imprisonment in the present law should be repealed.

For the definite grant of power to the Interstate Commerce Commission, never on its own initiative, but only on formal complaint, to pass upon the reasonableness of freight and passenger rates or charges; also the definite grant of power to declare given rates unreasonable, as at present, together with power to prescribe reasonable rates in substitution.

Appeal from an administrative order of the Commission should not vacate or suspend an order unless it plainly appears that such order proceeds upon some error of law or is unjust or unreasonable on the facts, in which case, and not otherwise, the court may suspend its operation during the pendency of proceedings in review. All findings of fact by the Commission, when properly certified, should be received as prima facie evidence in subsequent proceedings in the case. New testimony offered by either party, when it appears that such testimony is material and could not have been taken in the first instance, should be taken by the Interstate Commerce Commission on order from the court. The time in which an appeal to the Supreme Court of the United States may be taken should be limited to thirty days, but such appeal should not vacate or suspend the order appealed from.

Those provisions are precisely as contained in our bill.

In connection with the subject that was brought up yesterday, in regard to giving the Commission power to prescribe a rate to be substituted for one which is found to be unreasonable or unjust, I would like to cite further from the report of the Industrial Commission, under the head of "Effect of maximum freight-rate decision," the Supreme Court decision in which the power to prescribe rates was denied to the Commission, although it had been exercised during ten years prior thereto. The Industrial Commission says:

The immediate effect of this decision was to prevent any enforcement of orders relative to rates by the Commission. The carriers immediately refused to obey any orders which the Commission issued for the redress of grievances. This policy has been manifested with increasing clearness during the five years subsequent to the decision. It has become more and more certain that the denial of the right, not only to pass upon the reasonableness of a particular rate, but to prescribe what rate should supersede it, means the abolition of all control whatever. The entire inadequacy of making rate regulations dependent upon the mere determination of rates as applied in the past without reference to rates which shall prevail in the future is apparent on all sides. More than this, all remedy for the parties who have borne the burden of an unreasonable rate would seem to have been removed. * * *

Experience shows that almost no shippers or other parties injured actually attempt to secure the restitution of moneys already paid for unreasonable charges. In only 5 out of 225 cases down to 1897 was a rebate actually sought, and in these cases \$100 was the maximum sought to be recovered. As a matter of fact, the damage inflicted by the existence of an unreasonable rate could not be measured by hundreds or perhaps by hundreds of thousands of dollars. The bearing of this citation is to show that any effectual protection to the shipper must proceed from adjudication of the reasonableness of rates before and not after they have been paid; that is to say, in advance of their exaction by the carrier. Power to pass upon the reasonableness of such rates prior to their enforcement as a consequence constitutes practically the only safeguard which the shipping public may enjoy.

In that connection I wish to introduce an interview, published in the *Railway World* of March 22 last, with Judge James A. Logan, general solicitor of the Pennsylvania Railroad, in discussing this question. I will read these extracts from it:

Fortunately, as the law came to be framed—

Referring to the interstate-commerce law—

it was recognized to be experimental and was conservatively expressed, its method of enforcement being left to depend upon the constraint of penalties named for its violation. The result was that, like all efforts to enforce business propositions by penal consequences, as an aggressive agency it was not a great success. Conservative action, however, on the part of the Interstate Commerce Commission, controlled by the guiding and restraining hand of the courts, coupled with the disposition of the railroad managers who recognized that having large gifts from the people, in the possession of their franchises to construct and operate railroads and in the possession of the power of eminent domain, and having much occasion to rely upon Government support in operation, and above and overruling all, the American instinct of recognizing the importance of the observance of existing laws, the whole tendency was that of gradual conformity to the law and a recognition of the right of reasonable governmental supervision. The result has been that latterly, whatever may have been the facts as to previous periods, the act to regulate commerce has been fairly well observed by the larger railroad interests; and being well observed, the crudities of the law as existing have been discovered and the necessity of a more direct means of enforcement of the powers of the Government recognized.

That an unjustly discriminative or unreasonable rate is wrong goes without saying. That when a given rate has been found to be unjust and unreasonable, after a full hearing of the parties by a disinterested administrative tribunal appointed by the Government, and another rate suggested as fair and just by the same tribunal, it must be manifest that the old rate ought to go out and the new rate come in, subject, of course, to review by the courts.

Further, he says, after having made a particular statement:

It may generally be stated otherwise as a provision authorizing the Interstate Commerce Commission to put in force a rate found by them to be just, subject only to the supervision of the courts; whereas now the Commission has no power at all to make an order as to a rate for the future, and its orders, even as to the past, can not go into force until after full hearing in the courts on new testimony; and the observation has been that such hearings are capable of indefinite prolongation.

For my part, I have faith in the integrity of governmental agencies, especially those of the dignity of the Interstate Commerce Commission. I believe not only the shipper but the carrier needs governmental help. In short, it seems to me the time has come when the Government should reassume the right of a moderate control and supervision over the carriers occupying the Government's highways and that this, in its operation, should reach forward as well as backward—the carrier to have a reasonable return for his investment in the agencies of carriers, and the shipper the assurance of a prompt service and a reasonable rate, and the public to be protected by stability and uniformity in all charges.

One further extract:

Another marked feature of the proposed legislation is that it makes the shipper who is a party with the railroad in violation of the law—that is to say, the shipper who accepts rebates and preferences—subject to the same penalties for this violation of the law as are imposed upon the carrier for such violation. Moreover, it allows the power of the court to be invoked against both shipper and carrier against the

allowance of continuance of preferences on the complaint of the Commission, its decrees in this respect to be enforced by prompt injunction processes. If this act is passed railroads can no longer be, as they are sometimes said to have been in the past, subject to the dictation of the great shippers both as to rates and facilities.

Mr. RICHARDSON. If it does not interrupt your argument—

Mr. BACON. No, sir; it does not.

Mr. RICHARDSON. I would like to hear you define just what authority and what power the Interstate Commerce Commission has now. I catch the drift of what you think it ought to have in addition, but what can it do now?

Mr. BACON. It has now the power of investigation and recommendation. Its orders have no effect until enforced by the court upon the application of the Commission. That is, if the order is not voluntarily obeyed by the railroad company the Commission is required to go before the circuit court and have the case reviewed and obtain from the circuit court, if the court finds it proper, an order for the enforcement of the ruling of the Commission.

Mr. RICHARDSON. Now, your policy is, instead of going before that circuit court, it is to give the Commission the power to enforce its own order and allow the railroad, in the meantime, to take an appeal?

Mr. BACON. That is it exactly; making the orders of the Commission immediately effective, subject to appeal by the carriers, placing the carriers in the position of complainants in that case, instead of defendants, as is now the case.

Mr. RICHARDSON. You would make the Interstate Commerce Commission take the place of the court?

Mr. BACON. That is it.

Mr. RICHARDSON. And give it judicial powers?

Mr. BACON. The Commission would occupy the position of defendant in the case, whereas now it is the complainant. The Commission now comes before the court as complainant to secure an order for the enforcement of its rulings.

Mr. MANN. That is not the real gist of what you are after. The Interstate Commerce Commission now has only authority as to rates to declare what is an unreasonable rate; it has not authority to declare what a reasonable rate is. You want to confer upon them the power to declare what a reasonable rate is and to enforce it.

Mr. BACON. The decision of the Supreme Court has placed the Commission in that position.

Mr. MANN. That is the law as it stands.

Mr. BACON. Yes; but, as I said a few moments ago, the Commission proceeded on the presumption that after finding a rate to be unreasonable it had a right to prescribe a reasonable rate for application in the future, which it did without question for ten years, and the object of this proposed amendment is to confer that power on the Commission, which it was supposed to possess, but which has been denied, and to enable it to resume its operations in the same manner it proceeded in the preceding ten years referred to.

The CHAIRMAN. During that period of ten years that you have spoken of was the administration of the interstate commerce law more effective, in your judgment?

Mr. BACON. It was far more effective.

The CHAIRMAN. Was it satisfactory at that time?

Mr. BACON. It was highly satisfactory, and I will say that as a close observer of transportation operations for the past thirty-five years or

more, and a pretty intimate knowledge of the workings of transportation affairs in connection with important business, that during that ten years the condition of transportation throughout the country was better than it ever was previously or than it has ever since been since this power was denied by the Supreme Court; and our desire is to restore that condition which existed during those ten years.

Mr. MANN. Do you know how many cases there were during those ten years where the Interstate Commerce Commission declared and enforced a reasonable rate?

Mr. BACON. I could not say the precise number; I know that there was a large number of such cases. Among its first cases—in fact, within three months after its organization—a case of that kind was determined and was complied with on the part of the railroad, as, in fact, all of their rulings were during that period that I have referred to.

Mr. MANN. I may be mistaken, but my recollection is that Judge Cooley, who was one of the first Commissioners, decided, in an opinion he rendered, that the Commission had no such power within the first year after it was inaugurated.

Mr. RICHARDSON. Had no power to declare what a reasonable rate was?

Mr. MANN. Yes; that is as I understand it.

Mr. BACON. The decision was, as I understand it, as rendered by Judge Cooley, that the Commission had no right to fix a rate primarily, but it did exercise the power, and exerted it continuously, to prescribe a rate to be substituted for one that was found to be unjust or unreasonable.

Mr. RICHARDSON. That is, you mean to revise a rate?

Mr. BACON. Yes.

Mr. RICHARDSON. Or change it?

Mr. BACON. Order a change, and such orders were complied with universally.

Mr. RICHARDSON. You say that existed during the period of ten years and that there was no trouble about it?

Mr. BACON. During the latter part of the ten years the question began to be raised whether this authority was specifically conferred by the interstate-commerce act upon the Interstate Commerce Commission.

Mr. RICHARDSON. To revise a rate?

Mr. BACON. To revise a rate, and under that questioning the Supreme Court sustained the position taken by the railroad interests.

Mr. RICHARDSON. That the Commission could not do it?

Mr. BACON. That they could not do it.

Mr. RICHARDSON. And you want, by this law, to be reinstated—

Mr. BACON. Yes, sir.

Mr. RICHARDSON. Put back in that condition which you say proved entirely satisfactory, and under which things went along all right?

Mr. BACON. Yes; it gave general satisfaction throughout the country.

Mr. MANN. Whatever may be the contention on the two sides, by the actual jurisdiction exercised during that ten years, you say that the enforcement of the law during those ten years was satisfactory to the shippers?

Mr. BACON. It was entirely satisfactory to the country at large.

Mr. MANN. And that any authority which they did exercise would be sufficient to be conferred upon them?

Mr. BACON. That is it exactly.

Mr. RICHARDSON. But it seems to me now, if you will allow me to say so, if I understand your position, that the desire you now have is to permit the Commission to render an absolute judgment, to go along and enforce it, and then let the railroad companies take an appeal? In other words, to hang a man and try him afterwards.

Mr. BACON. Not by any means; no. The Commission fixes its rate and the railroad complies with it, if it considers it reasonable and right.

Mr. RICHARDSON. But the railroad does not consider it reasonable and right, then they have to take an appeal after you have enforced the judgment?

Mr. BACON. Exactly; but while there is an apparent inconsistency there, the actual practical working of it would involve very rare and exceptional instances of injustice. As I said yesterday, they are so slight that when they occur they would affect such a small interest as compared with the interests of the public at large, which is held in abeyance and which is subject to the continuance of the wrong rate, that it is hardly worthy of consideration.

Mr. COOMBS. But here is the proposition, assuming that they had a right to the last resort, a resort to the highest court of the country; assuming that, then, do you not abridge that right by enforcing an intermediate judgment? How about that constitutional proposition?

Mr. BACON. You will observe that it is not an inflexible thing that any carrier considering itself wronged may by appeal to the courts have the order suspended during the pendency of the proceedings if the court, on an inspection of the record, is of the opinion that the action of the Commission is wrong; that it proceeds either upon an error of law or is unreasonable upon the facts of the case. It is made the duty of the court by this bill in such cases as that to suspend the operation of the law until the question is adjudicated.

Mr. RICHARDSON. By injunction?

Mr. BACON. The bill does not prescribe that it shall be done by injunction. It makes it the duty of the circuit court if, on an inspection of the record, it is clearly of the opinion that the order is illegal or is unreasonable to suspend the order pending the proceedings. Let me read a copy of that—

Mr. RICHARDSON. What is the difference, then, between that and the original plan of letting it first go to the United States circuit court and let them settle the question? If they have that right to revise at once, what is the difference in the position you take and the condition existing before, in allowing it primarily to go to the United States circuit court and let it be settled there?

Mr. BACON. To leave it to the judgment of the circuit court as to whether that ruling shall be suspended or not? At present it is not enforceable until the validity of the order has been passed upon by the court.

Mr. MANN. That is not the only change you make.

Mr. BACON. In this connection allow me to read you the precise provision of the bill.

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

Mr. RICHARDSON. Then if the railroads want to take an appeal from that court it would have to go to the Snpreme Court, but in the meantime the law will be enforced?

Mr. BACON. If it has not been suspended by the circuit court.

Mr. RICHARDSON. Suppose the Federal circuit court sustains the order of the Interstate Commerce Commission and says it is a reasonable rate, and still the railroad is not satisfied and wants to take it to a court of last resort—that is, the Supreme Court of the United States. While they were doing that your order would be enforced, of course?

Mr. BACON. That is true.

Mr. MANN. The bill specifically provides for that.

Mr. BACON. The purpose of that is to expedite proceedings. As you will see, in the present condition of affairs it is to the interest of the carriers to prolong proceedings to the utmost possible extent, and that has been their course right along. There are cases now before the courts that have been pending for nine years. There are numerous cases that have been pending for from five to seven years, and the railroads have pursued that course purposely.

Mr. RICHARDSON. That would apply to all courts throughout this country, to complainants and defendants throughout the country in general. There is a general tendency on the part of a good many parties to delay.

Mr. BACON. That is true; but it is greatly to the interest of the railroad companies to prolong this litigation, because during the pendency of the proceedings it is reaping the benefit of the rates which have been declared unreasonable and unjust. It has every incentive to prolong the proceedings. That is a condition from which relief must be obtained in some way or other, and it seems to this committee which I represent that the only way it can be obtained is by the course prescribed in this provision, which makes it to the interest of the carrier to expedite proceedings.

Mr. MANN. You say a case is pending now between the railroad company and the Commission which has been pending for nine years?

Mr. BACON. There is one case which has been pending for nine years; yes.

Mr. MANN. I should think that was a serious reflection upon the Commission.

Mr. BACON. What the cause may be I am unable to say.

Mr. MANN. That is, if there is any reason for trying the case at all.

Mr. BACON. But from my observation of the proceedings of the Commission I have never seen any reason or had any reason to suspect them of negligence or of want of proper care and proper exertion to bring their cases to settlement; but you who are lawyers on this committee know very well how easy it is for a party to postpone the trial of a case.

Mr. MANN. We know that one party alone can not postpone a case forever.

Mr. BACON. I will have to refer you to the reports of the Commission. The report for 1897 discusses it very fully, and the committee can obtain valuable information from that report.

Mr. RICHARDSON. I do not see why the same complaint does not apply to all other cases in life. My observation is that there is delay on both sides, and if you would apply that drastic rule to all the interests of life there would be a great upheaval.

Mr. BACON. The difference lies in the fact that in these cases before the courts of the country it is to the interest of both parties to secure an early decision, but in these cases I have been referring to it is to the interest of one party to delay the proceedings as long as possible.

Mr. RICHARDSON. I do not know that I agree with you that it is to the interests of both parties in cases in the ordinary courts to have a settlement, to conclude the cases. I do not think that is the case as a matter of fact.

Mr. BACON. It is a question of pursuing the course that will result in the less evil to all parties concerned, and when you balance the probabilities and the injustice imposed upon one party or the other, you can not fail to see that the injustice to the public is at least a hundred times greater than any possible injustice that may result to the railroad company. In the first place, the case of the railroad company has been considered by expert and skillful men in that particular subject, and their decision is presumptively correct. The instances in which it would be found to be incorrect would be exceedingly small. They have been exceedingly small in the past.

In fact the cases in which the Commission has been reversed have been almost entirely upon the construction of the law in reference to the power it confers upon the Commission and not upon the merits of the decision of the Commission itself, with the exception of the cases coming under what is known as the long and short haul section of the law, which has been construed by the courts differently from the way it was construed by the Commission. That, however, relates simply to the extent to which the section was intended to control the determination of rates in relation to longer and shorter hauls; but as to the merits of a case, the actual merits of a case in which the Commission has fixed any rate or prescribed any differential, as it is termed, between two competing rates, the Commission has never been overruled. It has never been overruled on a point of right, on a matter of equity.

Mr. MANN. Do you propose any amendment to the long and short haul in this?

Mr. BACON. No amendment to that. That has been purposely left out in order to have this particular point determined by itself by Congress without being complicated with any other point in connection with the law.

Mr. MANN. The Interstate Commerce Commission makes one of the strongest complaints against the defect in that provision of the law.

Mr. BACON. There have been several cases adjudicated under this section which have practically nullified that section of the law, and that needs attention, needs remedy; but so far as the convention which I represent is concerned we do not propose to do everything at once. We want to have this question settled in the first place as to whether the Commission shall prescribe the rate to be substituted when it finds the existing rate wrong, as it did during the ten years of its existence which I have referred to.

Mr. RICHARDSON. That is, in effect, that the judgments of the Interstate Commerce Commission are presumptively correct?

Mr. BACON. That is it; yes.

Mr. RICHARDSON. You reverse the order of things; that a man is supposed to be innocent until he is proven guilty.

Mr. BACON. It is hardly a question of guilt.

Mr. RICHARDSON. Yes; it is parallel.

Mr. BACON. It is a question of dollars and cents.

Mr. RICHARDSON. I understand; but the principle is the same, the ruling of all other courts is against that presumption that you are asking for, until the final court passes upon it. It strikes me that way.

Mr. BACON. But you must observe the distinction between the enforcement of freight rates and the enforcement of contracts between individuals. The individual can be protected while his case is pending by the filing of a bond, and finally obtain justice and lose nothing by the long continuance of the case in the courts; but in the case of the enforcement of freight rates the public has got to suffer continuously while these cases are being determined, unless some relief is provided, and that burden has become to be so great and so extensive and so general throughout the entire country that it certainly should receive the attention of Congress, and relief should be provided if there is a possible way for it to be obtained.

Mr. MANN. Do you expect to give us a lot of testimony showing that this present condition is very hard upon shippers?

Mr. BACON. We do not propose to present very much testimony of that character, although we will present some; but on that point we will depend upon the hearings that were held before the Senate committee on the Cullom bill. These principal provisions of our bill are substantially the same as the provisions in the Cullom bill. That case was exhaustively heard by the Senate committee two years ago, although action was not reached.

I will proceed further with a quotation from the report of the Industrial Commission on "The objections to power to fix rates in advance," the very question that is before us. That report says:

I would like right here to read a brief extract from an editorial which appeared in the Railroad Review of January 18, a leading railway journal, on amending the interstate-commerce law, which is as follows:

Elsewhere in this issue will be found a protest written by Mr. Walker D. Hines, vice-president of the Louisville and Nashville Railroad, against the proposed legislation to amend the act to regulate commerce so as to give to the Interstate Commerce Commission authority to determine rates.

Mr. Hines, as a lawyer, perceives great danger in transferring from the owners of the property to the Interstate Commerce Commission or to any other outside authority the power of rate making, but it is altogether possible that he is not as thoroughly posted as to the danger to railroad revenues which attaches to the present method.

This is of course a railroad view of the subject.

If any tribunal to which such authority should be committed should be one-half as reckless with rates as are the individuals at the present in control, there would be such a protest throughout the length and breadth of the land as has never yet been heard.

If the only question at issue was the simple one of rate making by the Interstate Commerce Commission, there would be little difference of opinion on the subject. It is a mistake to suppose that the Commission desires this power simply as a question of authority. It is only fair to say that so far as they advocate the amendment of the law in this particular it is for the purpose of making possible the administration of the law in accordance with the design thereof.

No denial whatever of the arbitrary and enormous power which the right to make freight rates imposes can be entertained for a moment. A pertinent question, however, is as to whether the exercise of such power by irresponsible railroad managers, as at present, is reasonable. If, according to the statement of the railroad interests themselves, the power to make freight rates involves the right to make or break men, industries, and even the prosperity of entire States, how great is the necessity for adequate supervision, subject to appeal to the courts. This is apparently recognized

by the more conservative representatives of the carriers themselves, as evidenced by testimony before the Industrial Commission.

Under the circumstances at present prevalent this arbitrary power is exercised by one party, namely, the traffic managers of the railroads in interest, without any appeal whatever. * * * As against the claim that the exercise by the Commission of the right to prescribe rates involves the transfer of all rate-making power for the roads of the country to an administrative commission, it may be urged that during the ten years that this power was supposed to exist no such revolutionary effect was discernable. So long as the Commission is restricted to issuing orders only upon complaint and after investigation, it is scarcely to be said that the roads will be deprived of their right to promulgate rates in first instance for themselves. * * *

The burden of complaint is at the present time that the railroads are the sole arbiters as to reasonable rates, and it seems illogical, therefore, however expedient as a matter of policy it may be for them, to allege the injustice of such a situation as a ground for objection to conferring rate-making supervision upon a Government commission.

The regulation of commerce is a large question. It requires among other things that rates shall be equitable both to the railroads and to the people. It also includes the adjustment of rates as between localities. It may fairly be doubted if in the absence of the power to say upon investigation what the rate should be there is any hope of accomplishing these things.

That the law needs amending is admitted. How it shall be amended is a question on which there are many divergent views, and in this respect railroad men differ as much as others.

I would say in this connection that the matter of prescribing the proper rate, when the existing rate is found to be wrong, is the only practical method of correcting a discrimination that is found to exist between two different competing localities. Unless, when the Commission has investigated a case and found that the rate is discriminative, it can state what change shall be made in the rate by the defendants—in those cases, of course, there will be two or more defendants—unless it can prescribe what rate shall be put in force by both defendants or all of the defendants in relation to these two particular points in question there can be no remedy provided whatever. If it simply declares that it finds the existing rate to be wrong and orders a discontinuance, the discontinuance of the existing rate may be made by a very slight change in either one rate or the other, which will afford practically no relief. To give relief the Commission must go further and say just what rate is requisite to be made to place the two competing points on an equality.

A case of that kind came up five or six years ago, called the Eau Claire case, which resulted in just that way. It was a case of discrimination in rates on lumber from Eau Claire, Wis., and from Winona and La Crosse to the same points, those two places being points on the Mississippi River somewhat nearer—100 miles or thereabouts nearer—to the points of destination than Eau Claire. The Commission heard the case and decided that the existing differential in rates, which was, I think, 5 cents a hundred pounds, if I remember rightly, was too large, was an unreasonable difference, and that it discriminated against the product of lumber in the region of Eau Claire; and the Commission declared that a reasonable difference in the rates between the points in question would be not to exceed 2 cents a hundred pounds.

One of the railroad companies, the railroad company taking the business from Eau Claire, immediately reduced its rates and made its differential 2 cents a hundred pounds instead of 5 cents a hundred pounds, as compared with the rates from Winona and La Crosse. The railroads taking the business from Winona and La Crosse immediately

reduced their rates the same. A further attempt was made—an attempt at negotiation was made—to agree on a differential to approach the decision of the Commission, if not to comply with it entirely; but the lines from La Crosse and Winona refused utterly to make any change in their rates which would produce a differential of less than 5 cents a hundred pounds from Eau Claire. And that case stands in the same way to-day, and that country, that lumber country, is subjected to that disadvantage of 3 cents a hundred pounds on its lumber as compared with the competing lumber section around Winona and La Crosse.

The CHAIRMAN. They got a lower rate, did they not?

Mr. BACON. They got a lower rate, but nevertheless it was just as largely discriminative; there was just as much discrimination in the second case as in the former.

The CHAIRMAN. Was the general shipper hurt by that or the locality?

Mr. BACON. The lumber-producing interest in that locality was subjected to that disadvantage unjustly as compared with the lumber interests in another locality. The cases that come before the Commission are largely of that character—cases of discrimination between sections.

Mr. MANN. This bill then would give to the Interstate Commerce Commission the right to keep up or raise rates?

Mr. BACON. It has not worked out in that way.

Mr. MANN. It worked that way in that case.

Mr. BACON. No; in this case there would have been no change in the rate whatever if the case had not come before the Commission, and the ruling of the Commission would have been to put the rate down from Eau Claire and not down from La Crosse or Winona.

Mr. MANN. If the company had attempted to put it down at the other place, then the Commission would have ordered them to raise it. Would not that have followed?

Mr. BACON. Yes.

Mr. MANN. How long would an order of that sort remain in existence; how long a time must elapse before a railroad company can reduce its rates after the Interstate Commerce Commission has decided what is the reasonable rate at a particular time under this bill?

Mr. BACON. I will state that the provision of our bill is that an order of the Commission shall continue in force two years, and if the rate is then changed by the carrier the public has the right to present its objections to the Commission and have the case considered by the Commission, and pending its consideration the previous rate shall continue in force.

Mr. MANN. During that time, then, the railroad company would not be permitted to reduce its rates?

Mr. BACON. Well, sir, the operation of the proceedings of the Commission has always been in the direction of reducing rates.

Mr. MANN. That is not the case, Mr. Bacon, before us. It is a question of power here. We know that the railroad company changes its rates on grain from the West several times a year.

Mr. BACON. Yes.

Mr. MANN. Necessarily the rates are lower, I suppose, in the summer time, when they have lake competition. At any rate, they are changed. Possibly the Commission would not require so low a rate in the winter time. Do you say that the railroad companies under this bill could not change their rate?

Mr. BACON. It would not affect that.

Mr. MANN. Why not? It fixes a reasonable rate.

Mr. BACON. It fixes a reasonable rate that may not be exceeded.

Mr. MANN. Is that your bill, "That it may not be exceeded?" That would not change the power now of discriminating rates.

Mr. BACON. The cases brought before the Commission are always those of being too high or discriminating.

Mr. MANN. I think sometimes the rates are too low; that that is the trouble; that they are too low from another point. Very often one city claims the rates are too low to another city.

Mr. BACON. In these cases one has been too high or the other too low; but as a general thing it has been the former, and the actual fact has been that in every case of that kind the rate has been reduced; the higher rate has been reduced.

Mr. MANN. Under this bill, when the Interstate Commerce Commission fixes a rate, can the railroad company change that rate within two years' time?

Mr. BACON. There is nothing to prevent its reducing it except in case of relative rates. In cases of rates between two competing points, if one railroad reduces the other must reduce correspondingly and preserve the differential which has been prescribed by the Commission. In relation to the question of reducing rates I would say, however, that it is no benefit to the public to have rates unreasonably low; it is no benefit to the public to have rates so low that the railroads can not furnish proper service and can not be of the value to the public that they would be otherwise; and the purpose of this bill is not to reduce rates; it is to produce equality, equity, and rectitude.

Mr. MANN. In the language of the bill "to establish or maintain"—

Mr. BACON. Read a little further, please.

Mr. MANN (reading):

The relation and to prescribe a rate or rates to be observed.

Mr. BACON. And to prescribe rates in order to maintain the relation.

Mr. MANN. That would be prescribing a rate which could neither be changed nor reduced, because if they could reduce it that would not maintain the relation. I do not take any side on the thing; I simply call attention to this.

Mr. BACON. I beg to say that it seems to me to be a far-fetched conclusion.

Mr. MANN. The Commission, under this provision, then, could not be effective, if they can reduce ad libitum.

Mr. BACON. Yes.

Mr. MANN. That would not affect at all, then, discriminations between two points?

Mr. BACON. If the Commission has decided that discrimination between two points must be stopped by observance of a certain relative difference in rates, that relative difference must be maintained.

Mr. MANN. But you would confer power to prescribe rates.

Mr. BACON. That is the one means by which the differential can be determined.

Mr. MANN. They do not say what the differential shall be.

Mr. BACON. They say what the rates shall be.

Mr. MANN. If they can reduce rates from one point, there is no way of preventing discrimination.

Mr. BACON. The party injured in such case can bring a second complaint and obtain a reduction at the competing point.

Mr. MANN. Not unless it is more than a reasonable rate.

Mr. BACON. It is not only a question of reasonableness but of justice. The bill all through proceeds upon enforcing reasonable and just rates, just rates being those that are just with relation to each other. That is one of the fixed principles of the present interstate-commerce act—that the rates shall be reasonable and just. The word “just” means just with relation to each other.

Mr. MANN. No; the word just, I think, means just in itself.

Mr. BACON. Just is one word and reasonable is another. The proceedings of the Commission have regarded the term “just” in that section of the bill as relating to the justice of relative rates, and the term has always been used in that sense in its opinions.

Mr. ADAMSON. Do you think that what is a just rate is not always a reasonable rate?

Mr. BACON. Just in relation to other rates; that is the meaning of the word “just.”

Mr. ADAMSON. It would be reasonable in regard to other rates also?

Mr. BACON. No; reasonable in itself. The rate must be reasonable in itself and it must be just in relation to other existing rates. That is the construction that the Interstate Commerce Commission has given to it in all its cases in its decisions and opinions.

I wish to call the attention of the committee to another provision, which has been incidentally referred to a little more specifically, and that is the one by which the evidence before the Commission in any case is to be treated as evidence in the review of the case before the circuit court, and also to the fact that any additional evidence that either party may desire to introduce must be taken before the Interstate Commerce Commission, the case being referred back to the Interstate Commerce Commission to receive the additional testimony, and certified up to the court; the object of this being the necessity that the full case shall be developed before the Interstate Commerce Commission, instead of a large portion of it being left to be developed before the court.

Heretofore the carriers have often only presented a part of their testimony before the Commission, and the Commission has decided the case on that testimony, and then the case has gone up to a court and the court has taken additional testimony and the case decided by the court has been, consequently, an entirely different case from the one decided by the Commission. This provision in the bill renders it essential for the parties to produce all their testimony before the Commission, and the court must pass upon the case under that testimony as certified by the Commission.

The CHAIRMAN. Why should you make an innovation of that kind? Ordinarily, in criminal affairs in the preliminary investigation I think the defendant is not required to develop his case at all; neither is he before a grand jury; and yet when it comes to the trial no one would say, it seems to me, that he should be prohibited from making a defense. He may have waived an examination and not introduced any testimony in the preliminary hearing. The same way before a Federal commissioner in all criminal matters.

Mr. BACON. The particular reason for that is that the decision of the Commission should be given upon full possession of the facts.

The CHAIRMAN. Facts that they have?

Mr. BACON. The full facts of the case. The Commission is clothed with authority to make its investigation and receive the testimony of both parties.

The CHAIRMAN. Yes; but, after all, it is only preliminary. Under the provisions of the bill the action of the court is confirmatory.

Mr. BACON. The principal object of that is to obviate delay. That has been one of the means that has been made use of by the carriers for producing delay in the courts, and to expedite these cases and bring them to a conclusion at the earliest possible moment, it has been deemed wise by all who have given study to the subject to require the entire testimony to be taken before the Commission.

Mr. MANN. There is one Interstate Commerce Commission and there are quite a number of circuit courts and quite a number of district judges who hold circuit courts. Now, you propose that all testimony throughout the United States shall be taken before one commission.

Mr. BACON. Yes.

Mr. MANN. Instead of permitting it to be taken before any of the courts, on the ground that it will expedite matters to take it before one commission. If you want to take testimony relating to California the Commission has to go out there and take the testimony.

Mr. BACON. That is the course pursued by the Commission. It proceeds to the most convenient point for all parties concerned to take the testimony.

Mr. MANN. It never goes where a Federal court sits.

Mr. BACON. Yes; but when evidence is taken before the Commission and the case is appealed to the Federal court and additional testimony taken, it occasions additional delay in determination of the case.

Mr. MANN. That would not cause any delay by the Commission; that is the charge against the court. I do not suppose it causes any additional delay.

Mr. BACON. It affords an opportunity to the carrier who is desirous of promoting delay to accomplish that purpose.

Mr. MANN. Do you think it would permit any more delay than to permit the defendant, after a case has been heard, to file an affidavit saying he had more testimony to take, and then after the circuit court had certified to the Commission that it needed this testimony and directed the Commission to take it, wait for the Commission to go to California to take that testimony? Which would create the most delay; to do that, or to allow the court to take the testimony?

Mr. BACON. I do not think there would be any material difference in such a case as that; but if this was the law, the actual working of it would be that the carrier would present all his testimony before the Interstate Commerce Commission.

Mr. MANN. If he wanted to delay, why should he?

Mr. BACON. Especially it would be his object, if the order of the Commission is to be immediately effective. It would then be to the interest of the railroad company to expedite it as much as it is to the interest of the public to do so. Let me read you what the Industrial Commission says under the head of "Delay and appeals to courts." It says:

Inasmuch as the final decision in any important case can not be rendered until the courts have passed upon the case, and since the courts will not accept the find-

ings or evidence before the Commission as final, it has become more and more common for the carriers to refuse to open their cases in full before the Commission at all. * * * The Commission thus is compelled to issue its orders not upon a full and complete hearing of the case, and is obliged, moreover, to have its findings reviewed by the courts upon the basis of entirely new considerations. The cases passed upon originally by the Commission, and later by appeal, by the courts, may be, and often are, essentially different. * * * The entire history of proceedings before the Interstate Commerce Commission is one of delay and inefficiency in the equitable settlement of grievances by reason of the facts above enumerated.

That is the opinion of the Industrial Commission after a thorough investigation of the subject.

Mr. MANN. May I ask—I do not ask for an answer now, however—for the authority of Congress to confer upon the Commission this power of taking testimony?

Mr. BACON. I think you are a better judge of the authority of Congress than I am.

Mr. MANN. I respectfully direct your attention to that. You propose here that a court trying an original case shall not take any testimony, it being admitted that the Interstate Commerce Commission is not a court, and can Congress clothe it with judicial power?

Mr. BACON. Not being a lawyer I can not answer that question. You understand such a question as that far better than I do.

Mr. COOMBS. Does the idea that a court can review a commission of this kind presuppose that it can go into a trial de novo?

Mr. BACON. I do not understand your question.

Mr. COOMBS. Does not the very jurisdiction of the court, the very idea that the court has the power to review the case of the Commission, suppose it goes into facts; is not that inherent?

Mr. BACON. The court is to review the case that has been under consideration by the Commission. The Commission, it seems to me, is entitled to have all the evidence before it renders its ruling, which is to be reviewed, and it is unfair to the Commission, it is unfair to the complainant, it is unfair to the public, that part of the evidence shall be given to the Commission on which its ruling is to be based and then that other evidence shall be submitted to the court.

Mr. MANN. The review imposed in a judicial body over commissions of this kind is for the ascertainment of facts, to ascertain whether justice has been done, to ascertain whether rates have been fixed commensurate to the amounts invested, and all of those questions, and it is held, as I understand it, that that is inherent in the courts. So when you deprive it of its jurisdiction, the right of review, the facts, the right of a trial de novo, it seems to me you get away from the fundamental idea that the court has jurisdiction at all.

Mr. BACON. No; it still has the power to review the case de novo, but under evidence which has been produced before the Commission.

Mr. COOMBS. That is not de novo, though.

Mr. MANN. Here is an authority conferred upon courts by the constitution, practically, a separate branch of the Government, the courts, a power which the Congress can not take away from them. The Interstate Commerce Commission says a railroad has fixed a rate in violation of the act to regulate commerce. You say, that question being presented to the court, the court can not take evidence.

Mr. BACON. The court is particularly instructed by the provisions of this bill, if further testimony is offered by either party and it considers that evidence important, to instruct the Commission to take that additional evidence and pass it up to them.

Mr. MANN. But you say the court can not take the evidence.

Mr. BACON. That is the provision of the bill as it stands. It must be referred back to the Commission for its taking of the evidence, and the Commission may give an entirely different decision on the receiving of the entire evidence.

Mr. MANN. There is no authority for it in the bill; there is no authority for it to give any different opinion at all.

Mr. BACON. The bill certainly provides that after hearing the testimony it shall give its opinion on the case.

Mr. MANN. Not after the second decree.

Mr. BACON. I so understand it.

Mr. TOMPKINS. It must necessarily follow or else that provision would be void.

Mr. MANN. There is no such provision in the bill whatever, but if there were it would not affect the question of the constitutional power of the legislature to say that the court shall not take testimony.

Mr. BACON. Well, that may be easily remedied, if it is erroneous in point of law.

I wish to read further the statement of the Industrial Commission on "Remedies in procedure suggested," in connection with this point. The report says:

What are the remedies proposed for the defects in procedure which have been above described and which are responsible for much of the dissatisfaction with the interstate-commerce act as it stands? * * * In the first place, that the burden of appeal to the courts from orders or findings of the Commission shall rest upon the carriers rather than upon the Commission itself. In other words, the Commission having promulgated its order, the same shall become effective and binding unless the carriers shall bring suit in a United States court within thirty days to compel a review of the case. This, it is alleged, will operate to give finality to the larger proportion of the proceedings of the Commission, making them effective at once. * * * And secondly, that the evidence, pleadings, papers, and exhibits taken before the Commission and certified by its secretary shall be filed with the court and received in evidence. The court may render its decision upon the basis of this evidence, if it please, or it may require that the Commission secure additional testimony. In any event, however, such testimony or papers submitted by the Commission shall be regarded as competent.

I will give way at this point, Mr. Chairman, in order that another gentleman who is here from abroad may present his testimony.

The CHAIRMAN. Before that I would like to ask you a question. You speak of your experience as a business man. In this connection let me ask you what is your business?

Mr. BACON. I am engaged in the grain commission business in the city of Milwaukee, and have been for thirty-five years.

The CHAIRMAN. Now, will you not explain to the committee, if you please, some of the hardships; give us some idea of the wrongs that, in your judgment, are to be remedied by this bill? Of course, you understand, Mr. Bacon, in the line of questions that are asked, that members ask you simply seeking light and in no other spirit. We want gentlemen who have studied this question and understand it in all of its bearings to enlighten us, and especially with regard to certain particular matters that we have less information about, perhaps, than others. So I wish you would give the committee some idea of the character of wrongs and of the remedies.

Mr. BACON. The wrongs are of two kinds. In the first place, the wrongs of discrimination. These pertain particularly to business men—

The CHAIRMAN. Right there. All discriminations are prohibited under existing law, are they not?

Mr. BACON. They are prohibited.

The CHAIRMAN. And there are penalties that may be urged against those who indulge in them under existing law?

Mr. BACON. They are in the case of rebates; but in the case of published rates which are discriminative, the only remedy is by means of complaint before the Interstate Commerce Commission and showing the Commission the fact of the discrimination in those published rates.

The CHAIRMAN. The more serious and frequent complaint in regard to discriminations are complaints of rebates?

Mr. BACON. They are not the more serious in their effects; they are serious as between individuals only. But the other class of discriminations is serious between communities. They debar certain communities from a share in the trade to which they are naturally entitled. The direction of trade is controlled by the rates prescribed by the railroad companies.

The CHAIRMAN. Take the large interests from a city like Milwaukee, in the grain trade. They are there in the nature of rebates, are they not?

Mr. BACON. No; they are more in the nature of discriminations against localities. The Milwaukee Chamber of Commerce brought a case before the Commission on the ground—

The CHAIRMAN. I was asking you the discriminations on these rates on traffic originating at Milwaukee. What is the character of those discriminations—rebates?

Mr. BACON. There are discriminations in rebates on business originating in Milwaukee.

The CHAIRMAN. Are those discriminations that the community of Milwaukee would complain of?

Mr. BACON. Yes, a part of them; not nearly so much as in the discriminations in the published rates, more especially from points in the West from which Milwaukee derives its business, and to points in the West to which its merchandise is shipped.

The CHAIRMAN. You mean discriminating published rates that would favor, for instance, Chicago rather than Milwaukee?

Mr. BACON. More particularly Minneapolis. The rates to and from Milwaukee and Chicago between the points in the West and those places are uniform, though the distance to Milwaukee is less than to Chicago. It is a well-established policy of the railroads to make the rates uniform to those two places, and there are certain circumstances which prevent its operating unjustly toward Milwaukee; but the injustice Milwaukee suffers from is the disproportionate rate charged from points in the extreme West, where grain is produced largely, to Milwaukee as compared with Minneapolis.

The CHAIRMAN. Minneapolis gets the better rates?

Mr. BACON. Minneapolis gets the better rates, and we brought a case, which I spoke of a moment ago, before the Interstate Commerce Commission, and the Commission decided in our favor and declared that the rates to Milwaukee were, from certain territory, from 2 to 3 cents too high as compared with the rates existing at the same time from the same territory to Minneapolis. But Milwaukee got no benefit from this decision, because it was given out just about the time that this decision of the Supreme Court was given which declared that

the Commission had no power to prescribe what change should be made in rates when it found that existing rates were unreasonable or discriminating. The railroad companies declined to obey the order, and the Milwaukee Chamber of Commerce summoned the railroad companies to appear before the Commission and show cause why they should not comply, but their simple defense was that they were unable to agree among themselves upon a less differential in rates than already existed. That injustice and that burden has been borne up to the present time, and will always have to be borne unless some change is made in this law. And that is only one case of a score of them that have come to my personal knowledge during the last few years.

The CHAIRMAN. On those products that go from Minneapolis eastward is there any rate that is compensative or that evens up the general charge that Milwaukee merchants would have to suffer from?

Mr. BACON. That question was considered by the Commission in the determination of the case, and it was decided to the contrary. It was decided that in order to place Milwaukee on an equality this difference which it prescribed should be made, and it reaffirmed this order when this second hearing was held, but no attention was paid to it. I will not say no attention, because a very slight reduction in the rate to Milwaukee was made by the several companies at that time, varying from a cent to a cent and a half a hundred pounds; whereas the difference should be 2 to 3 cents to place Milwaukee on an equality. And the effect of that was practically nothing, for the reason that the difference prescribed by the Commission was barely sufficient to place the two markets on an equality, and the result was that Milwaukee suffered just as much after the partial reduction as before any reduction was made, and the tendency in favor of Minneapolis continued just as great as before, because the difference made was insufficient to affect the route or the destination of the grain from the point of origin as between these two competing markets.

Mr. MANN. Is it not a fact that nearly every large city of the country claims that the railroads running into it discriminate against them?

Mr. BACON. A great many of them do, and that is what the Commission is for—to determine such questions, to hear the evidence of the parties who complain of discrimination and determine whether it exists or not.

Mr. COOMBS. What has been the effect of the action of the Commission upon freight and bringing about a better condition for shippers, generally speaking? Has it been an instrument?

Mr. BACON. During the period when it exercised its authority of prescribing a rate to be substituted it was thoroughly satisfactory.

Mr. COOMBS. But I am speaking about the general results that have been brought about since this came into existence.

Mr. BACON. That is what I refer to. The results were very satisfactory during the ten years I have referred to, but since then they have been very unsatisfactory.

Mr. ADAMSON. I take it that if one point is charged a little higher than another point for the same distance it is claimed as a discrimination unless justified by some local condition.

Mr. BACON. As a general thing, yes.

Mr. ADAMSON. What conditions justify such a differential, aside from competition and the bulk of the business?

Mr. BACON. Distance is taken into consideration for one thing.

Mr. ADAMSON. But I say the same distance.

Mr. BACON. The rates are so intertwined with each other from one part of the country to another that they all have to be taken into consideration.

Mr. ADAMSON. That is what I am trying to find out.

Mr. BACON. Take shipping grain from the country I refer to to Milwaukee and Minneapolis. The rates to Milwaukee and Minneapolis have a certain difference one over the other. The rates to the seaboard from Milwaukee and Minneapolis, which is the final destination of most of the grain, have a certain difference. That difference should be equal in each case—that is, the rate on grain to Milwaukee and from Milwaukee to the seaboard should be equal to the rate on grain from the same point of origin to Minneapolis, added to the rate from Minneapolis to the seaboard.

Mr. MANN. You entirely eliminate Lake Superior.

Mr. BACON. No; Minneapolis uses Lake Superior.

Mr. MANN. But you are simply speaking of the railroad rates; you should remember that Minneapolis has a longer route.

Mr. BACON. I know that. The water rates really control the rate by the railroad.

Mr. ADAMSON. If the two points you mentioned are practically equal distances from the coast, I would like to know what all the reasons are that could be urged to justify a discrimination against one or in favor of the other?

Mr. BACON. Where the distance is practically equal I could not give you any good reason why discrimination should exist.

Mr. ADAMSON. The great trouble, I think, that people complain of is about rates. I do not know whether your new plan of letting the Commission fix rates would remedy it; I want to ask you about it. When I practiced law in the South, south of the Potomac and south of the Ohio had what they called basic points. I do not know whether they have the same plan now or not, but in effect I think it is the same.

Mr. BACON. Largely the same, yes.

Mr. ADAMSON. There are certain cities that have the same rate from either point in that territory, whether their trade goes backward or forward from one to the other, and some of my constituents have made cases and laid them before the Commission and they have died before they were adjusted in the courts. They present this: They say, You start in Washington with a rate the same as New Orleans, and you climb uphill until you get halfway to Charlottesville, or Danville, or whatever town it may be, when you go down again until you reach that point; and then after reaching Charlottesville or Danville you climb up again until you get halfway to Greeneville, or Atlanta, or whatever place it is, and then you go down again until you reach Atlanta and strike the same rate of freight; and then you climb up until you get halfway to Montgomery or Opelika; and then you climb over another mountain of rates between Montgomery and Mobile; and then another one between Mobile and New Orleans, and vice versa, back again. That may be an exaggerated statement, but I understand cases like that are in the books.

Mr. BACON. It is precisely cases like that that the committee is intended to remedy, that they are to hear, and they are to decide and determine and prescribe what change shall be made in the rate in order to make them just and equitable.

Mr. ADAMSON. The business men in those cities that call themselves competitive or basic points say they are distributing points, say they do a great deal of business, and they say the circumstance justifies them in having a better rate than the little towns along the line. I want to know in the first place what you think about a condition of that kind, and in the second place if your plan provides how that can be remedied.

Mr. BACON. It can only be remedied in that way. The railroads have various interests of their own to serve, and in fixing rates between competitive points they are governed more by the probable distribution of business than they are by questions of equity and right. Hence the necessity of bringing these cases before a competent tribunal that can consider all the circumstances in relation thereto and settle them upon principles of equity.

Mr. ADAMSON. Is it practical and desirable for the general good that there should be a literal enforcement of the long and short haul idea as to these cities and as to these little towns in between?

Mr. BACON. That is too large a question.

Mr. ADAMSON. It is one you ought to think about, and one the people are thinking about.

Mr. BACON. It has been one, as you know, that has received a great deal of attention during the past fourteen years, and one on which there has never been any substantial agreement reached.

Mr. ADAMSON. I supposed you were conversant on all those things?

Mr. BACON. I have studied that question and have a settled opinion in regard to it.

Mr. ADAMSON. What is it?

Mr. BACON. It is that the principle as laid down in the interstate-commerce act should be carried out.

Mr. ADAMSON. As to the little towns?

Mr. BACON. Yes; but that has been overturned by the Supreme Court upon the ground that elements of competition change the circumstances and the conditions, using the term of the section itself, which are to be considered, whereas the Commission has determined that railroad competition should not be considered; that water competition alone is the one that changes the conditions and circumstances under which that section of the law can be overruled.

Mr. ADAMSON. Then, your opinion of the other question I asked. In the event that the Commission should be given the power with which you think it ought to be vested, will the complainant whom I described have any more hope of relief than they now have?

Mr. BACON. I think not, on this particular point, because this bill does not propose to make a change in the long and short haul section, the long and short haul clause.

The CHAIRMAN. Does it not make a change? Suppose the Commission should adopt this idea with regard to the long and short haul clause, would it not result in an entire change of our business system; would it not do away with distributing points, say, like Milwaukee, and would not the merchandise go directly, say, from the great center, a center like Chicago or New York, to the village, and not to Milwaukee at all?

Mr. BACON. I think not, sir. The long and short haul provision simply prevents intermediate points from being charged a greater rate than the terminal point. Business is naturally concentrated at great

centers, and the application of the long and short haul principle never can overcome that natural law, that natural tendency.

The CHAIRMAN. The hour for adjournment has arrived and the committee will be in recess until to-morrow morning at 10.30.

Adjourned.

THURSDAY, *April 10, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. E. P. BACON—Continued.

Mr. BACON. Mr. Chairman, following up a question which was asked yesterday in regard to the matter of requiring full testimony in cases brought before the Interstate Commerce Commission and appealed to the circuit court to be laid before the Commission, I have taken pains to get a legal opinion upon that question, which I wish to submit. It reads as follows:

The ordinary rule is that when a case is appealed from a lower court no testimony whatever can be taken in the higher court. This is universally true of appeals from the circuit court of the United States to the circuit court of appeals or to the Supreme Court of the United States. It is also true of all admiralty cases. If the record in the court below is used at all in the appellate court, that record can neither be added to nor subtracted from. If testimony has been improperly excluded in the court below, the case is remanded to that court for further hearing.

The provision in this bill as to the taking of additional testimony was drawn in analogy to the practice before the General Appraisers. Whenever a question arises as to the rate of duty to be imposed, the importer can file a protest, and the Board of General Appraisers then takes testimony and passes upon the protest. If the shipper or the Government desires to question the correctness of the decision of the Board of Appraisers, an appeal is taken to the circuit court. If now either party wishes to take additional testimony, this must be taken before one of the appraisers.

I also wish, in confirmation of a statement I made yesterday that there was a case pending in the Supreme Court that has been pending for a period of nine years, to cite the case referred to. It is the case of the *United States v. The Missouri Pacific Railway Company*, begun in the United States circuit court in 1893. It is still pending in the United States Supreme Court. That was begun nine years ago. It was brought by the Attorney-General upon request of the Interstate Commerce Commission on complaint of Wichita, Kans., shippers.

The CHAIRMAN. Do you know anything about the history of that case; do you know who is responsible for that astonishing delay?

Mr. BACON. I am not familiar with the details of that case.

Mr. MANN. I think that case is not reported by the Commission as a pending case in their last few annual reports.

Mr. BACON. The case was not heard before the Commission. It was carried directly to the circuit court, taken directly into the circuit court, at the request of the complainants, who made their complaint to the Commission, it being the desire of the complainants that it should be tried in the court rather than before the Commission, and, in accordance with the provisions of the interstate-commerce act, the Commission undertook the prosecution of the case through the Attorney-General. What the status to-day is I am unaware.

Mr. MANN. They purport to give a list every year of the civil cases that are pending. Is that one in that list?

Mr. BACON. I could not say whether it was on the list.

Mr. MANN. They reported last year that they had 11 civil cases pending throughout the United States. That is this year; the report is in January.

Mr. BACON. I have a memorandum of two cases that had been eight years in the courts which have been decided. One is the case of the Interstate Commerce Commission *v. The East Tennessee, Virginia and Georgia Railway Company et al.*, begun in the United States circuit court in April, 1893, and decided by the Supreme Court in April, 1901. That is known as the Chattanooga case.

The CHAIRMAN. Are you familiar with the history of that case? Do you know the reason for the delay there?

Mr. BACON. That case, I believe, involved the question of the construction of the fourth section of the law which is commonly termed the "long and short haul" section. There has been a difference of opinion between the Commission and the courts as to the construction of that section, arising from the question as to what constitutes a difference in circumstances and conditions under which, by that section, the Commission is authorized to suspend the operation of the rule. The Commission in this case did not consider that the competition involved was such as to change the circumstances and conditions sufficiently to require the suspension of the operation of that section.

There was one other case before the court at the same time, involving the same question in another court—a United States court—and the two cases were somewhat dependent upon each other, which is a partial reason for the long continuance of that case. Another case which occupied eight years was *The United States Interstate Commerce Commission v. The Clyde Steamship Company et al.*, begun in the United States circuit court in May, 1893, and decided by the United States Supreme Court in 1901, called the Georgia commission case.

I wish also to refer to the illustration which was used yesterday, which seems to be rather a misleading one in relation to the putting into effect of the decision of the Commission before the case has been adjudicated before the courts, the illustration being that it was practically hanging a man and then trying him afterwards. Now, while apparently there is some analogy, that will not bear analysis. The fact is that the defendant in this case is deprived of his liberty while the case is being adjudicated in the same manner that a criminal is deprived of his liberty while his trial is in progress.

Now, I will yield the floor to the representative of the National Hay Association, asking the privilege at a later time to conclude my remarks on the subject.

STATEMENT OF MR. JOHN B. DAISH, OF WASHINGTON, D. C.

Mr. DAISH. Mr. Chairman and gentlemen, I represent, as chairman of a special committee to appear before you, the National Hay Association. This association is an organization of shippers, some 700 in number, resident in the various portions of the United States, with a membership extending from Massachusetts to the Indian Territory and from Virginia to California.

This committee consists of the following members: John B. Daish,

Washington, D. C.; George C. Warren, Saginaw, Mich.; J. W. Sale, Bluffton, Ind.; C. S. Bosh, Fort Wayne, Ind.; Charles England, Baltimore, Md. Owing to business reasons, Mr. England is the only member able to be present on this occasion, although others may appear before you later.

These hay people—and I am one of them, for the reason that I have an interest in a concern in this city which handles hay—have had a peculiar experience under this interstate-commerce law. Before going into that experience I wish to answer, if possible, a couple of questions which were asked on yesterday and the day before with regard to certain matters. If I understand the question correctly asked by one of the gentlemen, it was in this shape: Taking the first ten years of the history of the Interstate Commerce Commission, how many of their decisions dealt with the question of the reasonableness of rates in proportion to the entire number? It is reported, on page 16 of the eleventh annual report, which is the report for 1897, referring to unreasonable and unjust rates, that “of the 135 formal orders made in suits actually heard from the date of its institution until 1897, 68 have prescribed a change in rates for the future,” making about one-half of the number of all the cases at that time dealing with unreasonable and unjust rates.

Our experience is now in the state of going on. It is not a past experience, and it was indicated by one of the members yesterday that the committee wanted the actual observation and experience of working under this act. I trust it will not be tedious to review shortly the history of hay as a transportation feature. I do not care to go into it fully at all, but simply enough to give you an outline of what we have been through from 1887 until the present time. In conformity with the act the carriers have put forth what is called a classification; that is, certain articles go first class, or double first class, and others go second class and third class, and so on all the way down to the lowest class, which is the sixth class. From 1887 to 1900, with a short period intervening of about six weeks in 1894, hay was transported at this lowest or sixth class rate, 25 cents per 100 pounds from Chicago to New York.

Shortly prior to January 1, 1900, for the various railroads in the territory south of the Great Lakes and extending from the Mississippi River to the Atlantic Ocean on the east, this committee determined that it was for the best interests—I suppose of the carriers—I do not know—to place hay in the fifth class, and that rate is 30 cents per 100 pounds from Chicago to New York. Not only was a change made at that time in the rate of transportation of hay, but I think also of some 800 other articles.

This was felt to be an injustice. This advance from 25 cents to 30 cents was felt to be an injustice and a discrimination against hay as a shipping commodity. The chairmen of our various committees appeared before the official classification committee and protested. They said: “You are wrong; you will not have hay moved”—but all without avail.

The matter subsequently was taken up with the Interstate Commerce Commission and a petition very like a bill in equity was presented to the Commission and filed on the 6th of last August. Issues were joined and testimony was taken on behalf of the complainants about the middle of November. Testimony for the carriers was given in this city in

December. The case was argued commencing on the 14th of February, and of course the decision in that case is not yet rendered. What I have already stated is practically the history leading up to the present time. I take it that now it becomes reasonable and right that we should speculate on first, what would be our position as complainants in this case were it not for the decisions of the Supreme Court in 1897—what would be our position presuming that we had a decree in our favor at this time—and then what would be our position, and all the way along, in the position of carriers under the proposed amendment to this act?

Suppose, now, that we have a decree or order in our favor, and that the year instead of being 1902 is 1896. The Commission, in accordance with the statute, orders the several carriers to cease and desist from charging the unlawful rate on hay. The carriers naturally would say—it is their side of the case: "The Commission are wrong; hay is not being discriminated against. If we see fit to carry grain from Chicago to New York for 15 cents or 17½ cents per hundred pounds, that is our business, and we can carry hay for 25 cents or 30 cents, and that is also our business; and, gentlemen of the Commission, while we respect your views, you are seriously in error, first upon the facts and secondly upon the law; therefore we will see you enforce this."

They retain the rate at 30 cents per 100 pounds on hay between Chicago and New York. The Commission think they are right and they proceed to the circuit court, and the case is entitled "The Interstate Commerce Commission v. The Lake Shore and Michigan Southern and other railroads." The object of proceeding there is to compel in some way, shape, or form obedience to that order. There it lies for such length of time as the counsel can prevail upon the court to stay matters. We all know how that can be done, on plea of illness of counsel, or other reasons can be given.

Now, presume that the ruling of the circuit court is that the Interstate Commerce Commission is right; but right or wrong, it is immaterial for the sake of this illustration. The case goes to the court of appeals and from there to the Supreme Court of the United States, and it is immaterial for this illustration whether the contention of the Interstate Commerce Commission on the petition of the hay association is correct or not. Considerable time has elapsed pending these several appeals and reports. In the meantime hay has been carried, and the freight has been exacted at the rate of 30 cents per 100 pounds from Chicago to New York, and from points east of Chicago it takes a proportionate rate. Of course there is this chance as well, that the carrier may have said, "We were not justified in advancing this rate."

Mr. RICHARDSON. Does not the railroad give a bond when it takes that appeal?

Mr. DAISH. No, sir.

Mr. RICHARDSON. To the circuit court?

Mr. DAISH. No, sir; I understand not.

Mr. RICHARDSON. The rule is different there, then, from all other rules in appeals taken to the courts of appeals. Every one of them requires a bond.

Mr. DAISH. I so understand.

Mr. RICHARDSON. How do they get up there? Do they not give some security for costs?

Mr. DAISH. I think not. They may give a security for costs, but certainly no security to indemnify any shipper on the excess charged.

Now, then, presume that the upper court should determine that we were right in our contentions. Suppose now, and it is possible as I was about to state, that the company had thought the judgment of the Interstate Commerce Commission correct, and that the contention of the original complaint was right. Under those circumstances they would obey the order of the Commission, and hay would be transported at 25 cents per 100 pounds. I am not familiar with statistics showing the number of orders which the carriers have refused to obey. I have heard it stated, however, on fairly good authority, that between 1887 and 1900 there had been issued against carriers 22 formal orders or decrees, and that of those 22 orders but 7 had been obeyed by the railroad companies.

Now, let us transfer the case to another period of time, and instead of considering 1896 consider what might be done now. The carrier knows, as we know, that the Supreme Court of the United States has said that the Interstate Commerce Commission can say to Mr. Railroad: "You have done wrong in the past, but neither we as a Commission nor any other body outside of Congress can prescribe the rate for the future. No court can say anything to you about what rates you shall charge on or after this or any subsequent date. You have taken from the pockets of the people an unjust and unreasonable charge, but we can not prohibit you from doing it in the future, because the Supreme Court of the United States has said that we can only determine what was wrong in the past; and while we strongly recommend to you, and in fact order and decree you, to cease and desist from charging this unreasonable rate, yet we can not compel you to do it."

Well, what would we all do under those circumstances? The father says to his little boy: "Boy, you were wrong in telling that story." The boy tells another one; and I don't know how it is with most boys, but I know that what I got for doing that when I was a child was I got whaled. The Interstate Commerce Commission can say to the carriers, "You are wrong, but we can not whale you. You can keep on and do as you please. I will endeavor to use my best arguments to show you that you are wrong. We have been all through this case, and we have heard testimony for two or three weeks, and we have weighed carefully all the interests involved. We know there is a large stretch of country to be considered and that the amount of the traffic is enormous, and we have weighed all that, and we do not think that the circumstances and conditions to-day justify your charges in this particular case."

But the carrier, or any one of us, would simply say, "If I can get 30 cents I am not going to take 25 cents." It is a business proposition. In fact this entire subject of interstate commerce is more a business proposition, it seems to me, than it is a legal one. I will agree with anyone that there are certain legal features connected with it, certain matters that constitute a law to be considered, but it is a straightforward business proposition, with an eye to the interests not only of the public but to the interests of the carriers.

Mr. RICHARDSON. Will you allow me to interrupt you there for a moment?

Mr. DAISH. Certainly.

Mr. RICHARDSON. According to your theory that you have just been

advancing about hay, supposing that you had the authority, as you are contending now, to have a summary judgment and execution; that is what you are contending for?

Mr. DAISH. Yes, sir.

Mr. RICHARDSON. And then let the appeal go along outside of that. Suppose you had that, and the Commission had fixed the rate at 30 cents, and the railroad were to take an appeal and finally get up to the Supreme Court of the United States, and the Supreme Court of the United States should say that the Commission was wrong. You would have gone on in the meantime, and you had fixed the rate at 25 cents. What would you do in the matter of your error, in case the court was right?

Mr. DAISH. There is no provision in the fourth amendment for a case of that kind.

Mr. RICHARDSON. But common justice would—

Mr. DAISH. I am coming to that point. The common justice of the hay case is this, that for thirteen years hay was carried at 25 cents per 100 pounds, and that was one of the arguments advanced before the the Commission, that if it could have been carried for thirteen years for 25 cents it can be continued to be carried at that price. There is no provision, as I take it, in the proposed amendment to provide for the case which you have cited.

Mr. RICHARDSON. Then would it not mean this, that you had improperly and utterly without law made that railroad take rates that you could not possibly refund?

Mr. DAISH. That is right.

Mr. RICHARDSON. I thought so.

Mr. DAISH. But at the present time the law is such that they make us pay rates that they can not possibly refund.

Mr. RICHARDSON. One wrong does not justify another.

Mr. DAISH. Yes, that is true; but in the case cited it is our ox which is being gored and in the other case it would be their ox that was being gored.

The CHAIRMAN. Before you leave that illustration you gave, I want to ask you what would be the difference in the compensation for hauling a carload of hay or grain at the rate of 25 cents and at the rate of 30 cents; or 17 cents and 25 cents?

Mr. DAISH. The minimum weight of a carload of hay is 20 tons, though the maximum is much more; but the average weight is 22,000 pounds, or 11 tons. Figuring, however, on the minimum weight, the freight charge from Chicago to New York would be \$60 for a car of hay or straw. The maximum weight for a carload of grain, the average 36-foot car, is 40,000 pounds. At 17½ cents that would be \$70. At the time the petition was filed the rate was 15 cents, making the rate per car from Chicago to New York on either grain or hay about \$60.

Mr. CORLISS. What is it now?

Mr. DAISH. Now it is 17½ cents.

Mr. CORLISS. And that corresponds with the increase made in the rate on hay?

Mr. DAISH. No; that is, I take it, a winter rate. It was put into effect about October 21.

Mr. ECKHART. A published rate?

Mr. DAISH. Yes, a published rate.

Mr. MANN. That is not the rate that they charge.

Mr. DAISH. We had something to say on that subject in the hay case, namely, that the rates on grain were not according to the published tariff, but less, and I would not want to stand here and say that we proved it conclusively, but from some developments since our hearing it has been shown, I think, that certain parties are accorded special rates on grain.

Mr. MANN. It was admitted in the Chicago hearings recently that everybody was accorded special rates.

Mr. DAISH. That, I think, refers to certain cities. I doubt seriously if there are, and, in fact, I will state from what I know of the grain business of this city that no cut rates are in force in Washington, nor have there been in five or six years, at least.

Now, to come back to this supposed order and decree in favor of the Hay Association at the present time. As I said, the carrier feels that he is not compelled to do a certain thing—namely, to transport hay from Chicago to New York for 25 cents—and just as naturally as he feels that he is not compelled to do it, just so naturally is it human nature—and I do not blame him for it—not to do it. If the merchant can sell his goods for \$1.50, he will not sell them for \$1.40. If the street cars could get 10 cents per passenger, they would not sell six tickets for a quarter. There are certain things that dominate business, and one of those things, aside from what my neighbor may do, aside from straight competition, is some rule of law or action which may compel me to do a certain thing.

Now, transfer, by way of supposition again, this decree in favor of the complainants, and presume that this bill which we have been considering has become a law. The order in that case is slightly different, bears at least a different name, from what it would bear to-day, and it takes effect on a particular day, not less than twenty days beyond the time that the order is promulgated. The Interstate Commerce Commission, we will suppose, enters its decree and serves it upon the 10th of a given month, and so it will go into force and effect on the 1st of the succeeding month. Presume, now, two things: Either that the judgment of the Commission is radically wrong, that so seriously are they wrong that he who runs, and he who looks over the record, could see that, or that it would not take an attorney or a man of any particular ability at all, but it would take merely a business man, and suppose they are almost absolutely wrong, and ought to know it themselves, what may the carrier do under this act?

He proceeds to the circuit court, shows to the circuit court that this decree is not in accordance with the facts; that it is diametrically opposite to what was shown by both parties to the original proceeding, and that it is utterly and absolutely contrary to the law. Thirty days then intervene, and if it appears to the circuit court within that thirty days that the Commission is absolutely wrong, that the case is anything that I suppose it to be, the circuit court may suspend the operation of that order. Furthermore, suppose some serious change happens, as it may happen, in the shipment of a single article. Take some article that does not move in large quantities, and suppose there was some new method of transporting that, some new way of getting more into a car, the carrier has a right under this act at any time to come forward, not only within the twenty days or thirty days succeeding, but fully to the extent of the three years' time for which the order shall be in force and effect, and ask the Commission to suspend or modify

their decree in a certain case rendered on, say, the 10th day of this month that I have supposed.

Suppose, however, that instead of its appearing that the Commission is radically wrong, that it is a close case, that it is a case about which honest and upright men would differ; suppose it is more a question of judgment, or more a question of belief in witnesses who are very close together, and yet there is a little line, a fine line of division, and one man will say, "I believe that Smith told the truth," and another will say, "I believe that Jones is talking more honest"—suppose it is a close case. The circuit court would have jurisdiction first, and it would be heard there and then go on up through to the Supreme Court of the United States.

Right here, as a broad line of demarcation between the law as it exists to-day and the law as it exists under this method, it will be recalled that it was asked, or practically asked, what would be the status of a charge under the present act. At the present time this status would be 30 cents, because the carrier says, "I refuse to do it at 25 cents." Under the act, presuming, as I have presumed all along, a decree in favor of the complainants, the charge must of necessity be 25 cents. Suppose, upon the other hand, that the decree of the Commission after the passage of this act is a correct one and in favor of the complainants. The carrier may again go into the circuit court and follow the same line of procedure. There is a third horn to this dilemma, and it prevails all the way through, not only in 1896, but as well at the present time, and would also if the present proposed amendment should become a law.

If the shipper proceeds upon complaint before the Interstate Commerce Commission, and it is decided there by reason of the facts or law that the complaint is not well founded, the shipper has absolutely no remedy before the court in that case. The fact was referred to yesterday that almost all of the cities complain of discrimination against that particular city. There have been quite a number of such cases. Baltimore fears that New York has a better rate. Some of the Southern cities, cities farther south, think that Baltimore has a better rate than they do. Boston thinks that New York is not entitled to her present low rate on grain, because it cuts the Boston people out of the export business.

But suppose a case of that kind, suppose the Boston people, for example, say, "We are being discriminated against," and suppose that after a complaint and hearing, extending over from three to five or six months, the Commission should determine that the Boston people are wrong. It is the highest place to which the Boston people can go. They can not appeal to the circuit court, nor the court of appeals, nor the Supreme Court of the United States, nor any other place. It is a peculiar thing that the original act provided for appeals on behalf of the carrier alone, probably a wise provision. But suppose that the Commission should decide in favor of the complainant—and I have considered the term "complainant" all along to refer to the shipper or dealer and not to a railroad, although there are cases, you will recollect, before the Commission where one carrier has brought suit against another—it seems to me that unless the Commission should be radically wrong it would be to the best interests of all of the parties concerned.

It was asked what has been the effect of the present interstate-com-

merce act. On behalf of the National Hay Association—and the board of directors are well aware of about what I shall present to this committee on this occasion, and the greater portion of the membership have also been notified, scattered though they be—we consider the present interstate-commerce act one of the best acts on the statute books. For the ten years immediately preceding 1897 there was peace and harmony, but it seems to us that since 1897 there has been more cutting of rates and, I personally believe, more underbilling, and that the conditions extant to-day in the general shipping world are worse than they were prior to the enactment of this statute simply because of the want of enforcement of the statute.

Mr. COOMBS. In what way does the cutting of rates hurt the shipper?

Mr. DAISH. It does not hurt the man who has the rate, but it hurts his competitor.

Mr. COOMBS. How?

Mr. DAISH. Suppose, for example, Mr. Bacon to be a shipper from Chicago, and myself to be his confrère or brother on the board of trade. Suppose Mr. Smith in New York desires a little grain—50 or 100 cars. The published tariff is $17\frac{1}{2}$ cents. Then suppose that a special rate, for example, be made to Mr. Bacon at $14\frac{1}{2}$ cents. Mr. Smith can buy the grain of Bacon, Mr. Bacon can, as we say, split the freight rate, give Smith a cent and a half per 100 pounds advantage, keep a cent and a half for himself, and I can not deal with him.

Mr. COOMBS. You mean with reference to competition between middlemen that one would have an advantage over another?

Mr. DAISH. That is one result.

Mr. COOMBS. That is about the substance of it.

Mr. DAISH. That is one result.

Mr. COOMBS. I asked you because I do not understand these questions much.

Mr. DAISH. Well, the question of cut rates and advantages comes entirely, or largely, under the head of discrimination.

Now, discrimination, as I understand it, in interstate-commerce business is of three kinds: First, a discrimination against a particular article of traffic; second, the discrimination against a particular locality, and, third, a discrimination against individuals.

To illustrate: I have been referring in this hay case to a discrimination against a particular commodity. Suppose, for example, that the rate on sixth-class commodities from Cleveland to New York is $21\frac{1}{2}$ cents. Suppose the rate on second-class commodities from Saginaw, Mich., to New York is $27\frac{1}{2}$ cents. Now, the distance, if I recollect the mileage correctly, from Cleveland to New York is 593 miles, and from Saginaw to New York is 702 miles. It may be—I do not say that it is, though it would seem—that the 6 cents additional for that 108 or 109 miles is a pretty heavy charge; and presuming that one of those charges is too heavy, the other is too light in comparison with the former. That would constitute a discrimination against a locality. The man who had grain or hay or some other commodity at Cleveland for shipment to New York would be enabled to put his commodity in the market at a relatively less basis, a very much less basis, than a party who had his commodity in Saginaw and wished to have it delivered in New York.

As for discrimination between persons, which is the third class of

discriminations as I have mentioned them, that would be where two parties, to use the language of the act, "under substantially similar circumstances and conditions," two persons in the same town, engage practically in the same class of business, one of them receiving a rate to a certain town of, say, 20 cents, and the other being compelled to pay a rate of 25 cents. The former, as we would say in business, would have the bulge on his competitor. The former would be buying all the grain at this little crossroads because he could pay to his farmer friends a quarter of a cent or a half a cent or a cent a bushel more. The latter, the man who would have to pay the higher rate, had better close up his place and go out of business, because he would not be on an equal footing. I do not mean in regard to his talents and his ability to do business, but because of his inability to compete with the other merchant, whether on goods coming out from the city or going into the city.

Suppose the case of a dry-goods merchant. Freight is an inconsiderable thing with dry goods, but suppose that one merchant should be compelled to pay 30 cents a hundred pounds to bring dry goods to his place, and his neighbor, bringing a greater number of carloads than the first man, would be allowed to have it come through at 15 cents per hundred pounds. Manifestly there is an injustice to the first party.

The CHAIRMAN. Now, suppose the larger rate is a fair rate. Suppose that 30 cents is a fair rate to the carrier. The other man gets his goods shipped at 15 cents. He is able to sell that much more, and the public, his customers, get that benefit. Who should complain?

Mr. DAISH. There is nothing wrong with that, Mr. Chairman, I take it, except the last few words of what you have said, "The public gets the benefit." They do not. My experience is that they do not.

The CHAIRMAN. You say the customers of a man doing business getting a 15-cent rate do not get the benefit?

Mr. DAISH. The party who pays the 15-cent rate gets the benefit, as a rule.

The CHAIRMAN. Do not his customers get it?

Mr. DAISH. No, sir; I think not.

The CHAIRMAN. Then, there is no harm done, is there, in the competition, or to the competition, of the second man?

Mr. DAISH. There is no harm to the man who receives the 15-cent rate, but the man who pays the 30 cents must go out of business sooner or later.

The CHAIRMAN. But if this man who gets the lower rate does not give an advantage to his customers—he sells to his customers just as though he was paying 30 cents—and how does that affect their relative or respective businesses?

Mr. DAISH. I perhaps should change my remark a little. I do not mean to say that he does not give any of it to the public; but he does not give much. There is just a quarter of a cent or an eighth of a cent or a sixteenth of a cent which may be necessary to split a cargo of grain, and a sixteenth of a cent per bushel is a comparatively small portion of the cargo, and it has been stated by the public press that comparatively a small proportion of the grain goes at the published rates, and so far as I know—

Mr. MANN. It is openly conceded that the grain rate from Chicago for the last year has not been the published rate, but that everybody has shipped grain at a less rate than the published rate. There was no preference given to anyone.

Mr. DAISH. Well, I will say this, that I know shippers in Chicago who are to-day paying the published rates.

Mr. MANN. They may be to-day; they were not yesterday. They have just had an exhaustive hearing on this subject in Chicago, and the Interstate Commerce Commission reported that the special rates were given to anybody and everybody without any preference.

Mr. COOMBS. I confess my ignorance about these things. Supposing, as you say, for certain things that one man was paying 20 cents for 100 pounds for certain shipments to certain places. Now, there is a discrimination made in favor of some one, and a rate is given to him of 15 cents. Now, if that is put into operation and practiced, as it must be, does not that in itself have a tendency to reduce freights generally all along the line on those particular things, and all along the line would not that naturally be the tendency?

Mr. DAISH. I think it would, in a measure. There is a general tendency, and has been for a number of years, for freight rates to be reduced. Freight rates, generally speaking, are probably less to-day than they have been for a number of years. There has been a gradual decline. This is shown, in a way, by the decrease of the ton-per-mile rate.

Now, this question of cut rates I have referred to—

The CHAIRMAN. If it will not disturb you, I would like for you to make, for the purposes of our record here and for the benefit of the members of the committee, your argument in behalf of your complaint with regard to the hay, as shown by the illustration of the hay and the grain. As I understood you, you paid—I say you—

Mr. DAISH. That is right.

The CHAIRMAN. You paid \$60 per car for your hay?

Mr. DAISH. Yes, sir.

The CHAIRMAN. The grain dealer paid \$70 for his car. Now, what is the complaint?

Mr. DAISH. I argued that case quite fully before the Interstate Commerce Commission. I understand that my argument leading up to that, and the entire case, has not yet been transcribed by the reporter. I can submit that as an entirety or go into the figures at the present time, as the committee may wish.

The CHAIRMAN. You will have it in a few days?

Mr. DAISH. I do not care to juggle with figures unless I know positively the basic figures upon which I argue. I might make a mistake with respect to the facts, and I would prefer to submit that in writing, or at least to get some data which I have in my office on that matter. I shall be pleased to submit to-day or to-morrow a written statement covering that subject.

I will, however, say this, that while it appears that \$60 is the rate for a carload of hay from Chicago to New York, and \$70 is the rate for a carload of grain, the carrier transports twice as much grain as hay. That calls for some increased cost. Then when you ascertain the number of cars which will make up a train load, and figure the value of carrying a train of hay or a train of grain from Chicago to New York, the figures are practically these, that the revenue derived from a train load of grain is about \$3,200, while the revenue derived from a train load of hay is \$4,100.

Just one word more, if you please, at this time, and then I shall ask to give way to a gentleman here from outside of the city. I wish to

say this in regard to cut rates; cut rates not only affect the individual, not only affect Smith and Jones, competing parties in Chicago, but suppose that the rates from Joilet to Kankakee are practically the same as from Chicago to the seaboard. Suppose, then, that instead of the 17½-cent rate from Chicago to New York it is made 15 cents, an elevator at Joilet and Kankakee and other places paying 17½ cents, the grain will go by Chicago, and these smaller places, even though they may have large elevators, will not do any business.

Mr. MANN. Does not the present law absolutely cover the question of cut rates?

Mr. DAISH. Yes, sir; but it is on the question of enforcement of that, I take it——

Mr. MANN. We have nothing to do with the enforcement of the law. You should address yourself to the Interstate Commerce Commission, which has full authority now to pursue all inquiries in reference to cut rates.

Mr. DAISH. If you will refer to the recent proceedings in Chicago, in Kansas City——

Mr. MANN. I refer to the law. You are not asking any change here with reference to cut rates, as I understand.

Mr. DAISH. I was simply answering the question asked me. The bill does not deal with cut rates.

Mr. RICHARDSON. Let me ask you about the legal procedure under this bill that you are advocating. I think it is important in this matter as to how you proceed in court.

Mr. DAISH. Yes, sir.

Mr. RICHARDSON. As to the rights of plaintiff and defendant. Now, as I understand from you, when the Commission certifies to the civil courts its decision and the rate that it has fixed for the railroads to comply with, the Federal circuit court, if it supposes that the Commission was wrong in that thing, I understand that your idea is, and the law is, as I understand it, that the Commission can go afterwards and take additional proof, reopen that case, and, if it does not want to take additional proof, then it can right there, on the facts and the evidence that it had before, make another order without any additional proof?

Mr. DAISH. Without any additional proof there may be a modification of the decree——

Mr. RICHARDSON. Hold on a minute. It can make another order, and if that order is certified to the Federal court and is vacated it can make another, and so on, and it is ad libitum to annoy that railroad company.

Mr. DAISH. It is ad libitum to annoy the company, but Mr. Heins, in his recent monograph on that subject, called attention to the slackness of the Interstate Commerce Commission in not taking a similar decision before every circuit court in the United States. Suppose that one court has determined that it is wrong, why not submit it to some other circuit court and get another decision, and not abide by the decision of this one man?

Mr. RICHARDSON. There is no end to the power of the Commission to review an order.

Mr. DAISH. No end of it.

Mr. LOVERING. Are carload rates given on hay?

Mr. DAISH. Yes; it is all by the hundred pounds, you understand.

Mr. LOVERING. By the 100 pounds?

Mr. DAISH. Yes, sir.

Mr. LOVERING. And does it make any difference whether it is in ordinary packed bales or highly packed bales?

Mr. DAISH. There is no difference in the rate, whether by the ordinary bale, or the so-called Lowry bale, which is used for export.

Mr. LOVERING. It is so much per 100 pounds?

Mr. DAISH. Yes, sir; 30 cents.

Mr. LOVERING. And how much is the Lowry bale?

Mr. DAISH. That runs, I believe, 45,000 to 60,000 pounds. It is being used, I believe, in the army service in Cuba and the Philippines, but the fiber of the bale is badly torn in the process, I believe.

Mr. LOVERING. The rate of freight is the same?

Mr. DAISH. Yes, sir.

Mr. LOVERING. You do not get any advantage by its being close packed?

Mr. DAISH. No, sir. I will now yield to Mr. Eckhart, Mr. Chairman, with the privilege of touching hereafter not only upon the matters that the Chairman has just referred to but also upon some of the constitutional features at a subsequent meeting of the committee.

STATEMENT OF MR. B. A. ECKHART, OF CHICAGO, ILL.

Mr. ECKHART. Mr. Chairman, I represent the Chicago Board of Trade and the Illinois Manufacturers' Association. I will not attempt to discuss the different features of the bill or whether, if it become a law, it would conflict with the Constitution. I shall assume that the bill as presented, and which is now pending before your committee, has been carefully prepared and, if enacted into law, would be constitutional. That question, I presume, has been fully discussed by the gentlemen who have preceded me and who have given that feature of the subject careful consideration.

I will confine my remarks briefly to the evil that the milling industry of this country has been suffering under. I am engaged in the milling business at Chicago.

Our complaint is substantially this: The transportation companies for a number of years have been practicing rate discrimination against flour for export in favor of wheat for export.

There are about 9,000 mills in this country, scattered over 33 different States. I believe, according to the United States census of 1900, our industry stands fifth in the value of product, amounting to about \$550,000,000 to \$600,000,000 per annum.

The transportation companies for the last five or six years have carried wheat from the West to the seaboard very often at an abnormally low rate of freight, or, in other words, a secret cut rate. They have carried it at such a low rate of freight that the foreign millers were able to manufacture flour on the other side for a great deal less money than we could afford to lay it down for there.

The American miller can hold his own against the world if he is on an equal footing, notwithstanding the fact that we pay higher wages than any other country to our employees; we have never asked for any protection on the part of our Government or any special privileges, and we enjoy none.

Unlike many other manufacturing interests of this country, we are not protected, and we do not need protection providing our own transportation companies, the common carriers of this country, will treat

us fairly and put us on an equal footing with the buyers of wheat on the other side.

We are also unlike the French millers, who are protected by the French Government to the extent that they are paid a bounty or drawback for every barrel of flour that they ship out of France, which equalizes practically the tariff that is imposed by the French Government on the importation of wheat to that country.

The CHAIRMAN. What is that tariff rate?

Mr. ECKHART. I do not know that I am prepared now to give you the exact rate, but approximately it is 36 cents a bushel. I expected to look up the correct data before I appeared before your committee to-morrow morning.

The CHAIRMAN. What is the bounty?

Mr. ECKHART. I do not know that I can say definitely, but it is about equal to the amount of the tariff that is put on wheat.

Mr. LOVERING. Is that called a bounty?

Mr. ECKHART. It is a bounty or drawback.

Mr. MANN. It is the same as our drawback?

Mr. ECKHART. It is the same as a drawback.

Mr. LOVERING. The same as our drawback. But why is it a bounty if it is an amount that has been previously paid?

Mr. ECKHART. Well, I do not know that there is any difference between a drawback and a bounty, because the result is the same.

Mr. LOVERING. A bounty is a free gift out of the treasury of the government, for which it has received nothing in the first place.

Mr. ECKHART. Yes, sir; but the effect is just the same on the milling business.

Mr. MANN. I beg to differ with you. They pay on flour exported, whether it is made of American wheat or French wheat.

Mr. LOVERING. I understand that, but they can not receive a single franc bounty in excess of the duties which they have paid.

Mr. ECKHART. No.

Mr. LOVERING. And they have a system of certification of the payment of that duty, and they can draw against that in making their exports.

Mr. ECKHART. That is correct. It is just the same as the importation of jute bagging to this country. When we ship out flour in jute bags, exporting it, we get a certain amount of the value of the bag in rebate.

Mr. LOVERING. If we can identify it?

Mr. ECKHART. If we can identify it; yes, sir.

Now, the evil, as I stated in the outset, that we are laboring under is the discrimination, not so much in the published rate, as in the cut rate, which is given the shipper from time to time, and which is in many instances abnormally low, far below what the transportation companies receive for carrying flour, and in effect it practically prevents the millers of this country from exporting flour unless they are willing to do so at a loss, and that has been the practice largely for the last two or three years.

Many of the millers who have had a trade established on the other side and desire to hold the trade against any competition sell flour at a loss. I have done so myself. I have exported many thousands of barrels at a loss of from 5 to 7 cents a barrel rather than let my trade get away.

Mr. LOVERING. You consider 5 cents a barrel a good profit?

Mr. ECKHART. Less than that.

Mr. LOVERING. Four cents?

Mr. ECKHART. We consider 2½ cents a good profit for export flour.

The CHAIRMAN. Practically, the remedy which you seek is to require an additional charge to be made by the railways, by the transportation companies, on wheat?

Mr. ECKHART. We desire them to make a reasonable differential between flour and wheat.

The CHAIRMAN. You said their present rate was abnormally low?

Mr. ECKHART. The cut rate.

The CHAIRMAN. And less than it ought to be carried for?

Mr. ECKHART. Yes, sir; less than it ought to be carried for.

The CHAIRMAN. Now, in order to benefit your industry, you want to compel the railways to charge the wheat shippers a large sum?

Mr. ECKHART. Well, no.

The CHAIRMAN. That is practically what you want?

Mr. ECKHART. Not at all. We want them to charge a reasonable differential—that is to say, if transportation companies, by reason of the fact that the cars are much larger to-day, so that they can load 80,000 or 100,000 pounds in a car, where the maximum capacity used to be 30,000 to 40,000 pounds, and because of the fact that the rolling stock is much heavier and their engines larger, they can afford to make a lower rate than they formerly did in transporting the products from the producer to the consumer and to the markets of the world. We desire to have them treat us equitably and fairly as to the differential between flour and wheat.

The CHAIRMAN. These facilities for movement apply to both classes of shipments?

Mr. ECKHART. Yes, sir; to both wheat and flour.

The CHAIRMAN. How, then, does that answer the question which I put to you?

Mr. ECKHART. It answers it in this way: That it is unfair and unjust to a great industry of this country to compel us to pay a tariff rate of 17½ cents a hundred on flour from Chicago, for instance, and at the same time to carry wheat on a secret cut rate of 8 or 10 cents per 100 pounds. It practically means confiscation of so much milling property. We do not care what the rate is, any rate, if it is equal and just, will be acceptable. The average American citizen and manufacturer in the conflict of business life is always willing to run his chances with his competitors on an equal footing, but can not hope to do so when his competitor has been granted a special privilege.

The CHAIRMAN. Well now, there must be some reason for this remarkable differential that you have spoken of—17½ cents as against 8 or 10 cents. What is that reason?

Mr. ECKHART. Well, the railroad companies and transportation companies and their agents tell us that it costs a little more to carry flour than to carry wheat. The question was fully gone into a few years ago before the Interstate Commerce Commission at Chicago, and after the evidence was heard on both sides the Interstate Commerce Commission finally concluded that it possibly did cost a little more, but the differential was nominal. While it is true that it costs a little more to discharge or unload a car of flour in New York than a car of wheat, because the wheat is sometimes unloaded into an elevator from the car, there is a lighterage charge which practically equalizes it.

Then the railroad companies also contend that the millers do not load the cars as heavily as they would load them with wheat. That question we controverted, and showed conclusively that when they furnish us large cars we load them, as a rule, to the maximum capacity, for it is cheaper for the miller to load a large car than a small one, as a shipper invariably fixes up his own car, cleans it out and places it on the track, and loads it; whereas, in case of wheat shipment, the railway company is obliged to furnish inside car doors and clean it and fix up its own cars.

The Interstate Commerce Commission, after considering the question at the hearing at Chicago, determined that the railway companies were justified in making a slight differential between the shipment of flour for export and wheat for export, and they made such a recommendation, but the transportation companies paid but very little attention to the recommendation, and continue to make cut rates to shippers of wheat.

The CHAIRMAN. Is there not some other reason, must there not be some other reason, where these slight differences of cost exist, and where you find such an extraordinary differential as you have spoken of?

Mr. ECKHART. Yes sir; but we have no specific information upon that point, except a general idea.

The CHAIRMAN. What is your opinion?

Mr. ECKHART. I have an opinion, derived from information furnished by the transportation companies themselves, when they were asked why they made such a difference. The information was invariably this: "Our competitor has taken 100 or 150 carloads of wheat to transport to New York, Baltimore, or Philadelphia. We know that he has got that wheat, and we know that he did not get the tariff rate. We are not going to let our competitor transport all of this merchandise to the seaboard; we are going to get some of it," and invariably they would meet their competitor, and they would usually say, "If we were not obliged to make this cut rate in order to get a portion of this merchandise to carry we would not make this low rate."

The CHAIRMAN. Does not that reasoning apply to the flour as well as to the wheat? Would not the same inducements operate upon the railway in the transportation of one kind of freights as well as that of the other?

Mr. ECKHART. That has not been our experience.

The CHAIRMAN. What is the reason of that? What is your idea of the reason?

Mr. ECKHART. The reason of that, so the transportation companies tell us, is that they can get a large volume of wheat to transport—say 100,000 or 150,000 bushels, which is a large tonnage—and their agents are after large tonnage; they want to make a showing for their several companies. That is the argument they advance.

The CHAIRMAN. Now, while that argument might apply to Chicago, it certainly would not apply to Minneapolis, would it?

Mr. ECKHART. Well, yes.

The CHAIRMAN. Because undoubtedly there is a great deal more flour to ship from Minneapolis than wheat to ship out.

Mr. ECKHART. Yes; but Minneapolis has suffered in common with all the other sections of the country from that very same cause. They have been cut out as well as the mills in Iowa, Illinois, Nebraska, and

Kansas, or any other wheat-growing State. They have the same complaint to make in that respect.

Mr. LOVERING. Is there any difference in the hazard attending the shipment of flour and wheat?

Mr. ECKHART. No; I think not. I think the loss in transit of flour is less than of wheat, because there is no leakage. There is some little loss in transporting wheat because of the leaky cars, which does not apply to flour.

Mr. MANN. Can you tell us what is the relative cost of transporting wheat and flour by lake from Chicago east?

Mr. ECKHART. What do you mean, the tariff?

Mr. MANN. Yes; the relative cost. What is their rate from Chicago by lake?

Mr. ECKHART. The rate on wheat I think they have fixed at $15\frac{1}{2}$ cents.

Mr. MANN. By lake?

Mr. ECKHART. By lake and rail; and $17\frac{1}{2}$ cents all rail, to take effect on April 15.

Mr. MANN. What has been the usual cost of transporting wheat by lake from Chicago to Buffalo?

Mr. ECKHART. That has varied from $1\frac{1}{2}$ cents per bushel to 4 cents.

Mr. MANN. How about flour? That is what I want to get at, the proportionate cost.

Mr. ECKHART. Flour has been a little higher. It has been probably one-half to one and a half cents a hundred higher.

Mr. COOMBS. Does the valuation make any difference?

Mr. ECKHART. No, sir; I think not. There is not much difference between the finished product and the raw material; that is, the material of the class of flour that we usually export.

Mr. MANN. I had a letter from Mr. Purdy the other day on another matter. He was the manager of the steamship company who endeavored to open a steamship line from Chicago to Europe. In that letter he stated to me that it was not an uncommon practice now for ocean vessels to carry wheat as ballast, and carry it over and back, and they were glad to carry it, because if they did not they would have to go to the trouble of putting ballast in their boats. Does that affect the freight rates?

Mr. ECKHART. I presume there have been instances and that there was a time last year when they carried wheat across for a nominal freight rate, equal to about a penny a bushel.

Mr. MANN. Would that have any influence upon this abnormally low freight rate? That is what I want to get at.

Mr. ECKHART. I do not know. That would, of course, affect us in a measure, but that can only happen once in a great while. It is not a general practice at all. Conditions may be abnormal, and in the course of four or five years such a thing as that may transpire.

Mr. COOMBS. Now, is this true that a disadvantage to the miller would be a proportionate advantage to the wheat raiser?

Mr. ECKHART. No; I think not. The ordinary wheat raiser, the farmer, as a rule, likes competition in the purchase of grain, like everybody else. The flour mills are scattered throughout 30 different States of the Union where wheat is raised, and they are bidding against each other for this wheat.

Mr. COOMBS. Apropos of that, he, by getting cheap rates, gets into

the European markets and gets a better market there, because you complain that you have to compete with the millers in Europe.

Mr. ECKHART. Yes. It is also true that the American miller can manufacture all of the surplus wheat of our country into flour and export it to Europe in the shape of flour. In fact, the milling capacity is large enough to grind up all of the wheat that we raise in five months of the year if the mills are all run to their full capacity. The foreign buyers must necessarily have either our flour or our wheat to mix. The wheat that they receive from India is somewhat of an inferior quality and often is very dirty. It requires to be washed before it can be ground into flour. It is not so glutenous as our own wheat. It contains more starchy substance. The wheat that they get from the Argentine is of a similar character, and that from Russia is also much inferior to our own. They must, therefore, of necessity have either our wheat to mix with their wheat in grinding it or our flour to mix with their flour in order to get good results; and the practice has been heretofore, until the transportation companies took it into their heads to carry wheat much cheaper than flour for export, for the foreigner to buy our flour and mix it with their flour in order to give it strength, and as I started to say, they will take our surplus and enable us to grind it into flour here, so that we can afford to pay the transportation companies a reasonable freight rate for transporting it, and also enabling the transportation companies to get the carriage to the mills scattered all over this country—coal, fuel, oil, cooper stock, and bagging and other material necessary for the manufacture of this great volume of flour.

They would also have the carriage of the offal which is carted by the railways from the West to the East and distributed all over the United States. All these things inure, not only to the benefit of the American miller, but the American laborer, American capital, and to the transportation companies. Every dollar's worth of merchandise that we manufacture is of course an advantage to our citizens.

Now, we are perfectly willing that the transportation companies shall have a reasonable rate of freight, and we fully agree with them that there should be some properly constituted tribunal to protect themselves against each other; and we also believe that where the conditions are such that a great industry like ours is affected by reason of the practice of discriminating freight rates there ought to be some impartial supervision exercised over these rates, and some one who has power to enforce its finding, after hearing the facts on both sides, should determine what a just and equal rate between the shipper and carrier shall be.

The CHAIRMAN. Can you give the committee the difference in the selling price of wheat in France—American wheat—as compared with the India wheat? You have spoken of the India wheat as inferior.

Mr. ECKHART. Yes, sir; approximately.

The CHAIRMAN. How much more does our wheat bring in the markets of France, approximately?

Mr. ECKHART. I do not know as to France, but our No. 1 Northern American wheat commands in the United Kingdom usually a price higher by two to three cents a bushel. Of course, it depends upon the condition of the market in Liverpool. That is, the supply and demand of the two varieties of wheat.

The CHAIRMAN. You have spoken of the competition of the French miller with yourselves.

Mr. ECKHART. I simply did that as an illustration as to how France protects its milling industry.

The CHAIRMAN. We had a gentleman here before us the other day upon another subject who made the statement that there was practically no French flour made from American wheat in the London market.

Mr. ECKHART. In the London market?

The CHAIRMAN. Yes.

Mr. ECKHART. Well, I do not know as to that. I am not sure; but I am quite sure that a great deal of their flour goes into Holland, and Holland is one of our markets.

The CHAIRMAN. I want to pursue that matter a little further. What is the difference in value between American wheat and Russian wheat?

Mr. ECKHART. The American wheat commands a higher price than Russian wheat.

The CHAIRMAN. Can you give us the figures on that?

Mr. ECKHART. I should say, approximately, from $1\frac{1}{2}$ cents to 2 cents a bushel.

The CHAIRMAN. The Argentina and India wheat is lower?

Mr. ECKHART. Yes, sir; they are lower.

The CHAIRMAN. Than the American wheat?

Mr. ECKHART. Yes, sir; they are lower. I do not know what the difference is between India and Argentina wheat. I think the India wheat is perhaps a little better.

The CHAIRMAN. Those are the three countries that are our principal competitors in wheat?

Mr. ECKHART. Yes, sir.

Mr. LOVERING. Do you know if the Canadians import any of our wheat?

Mr. ECKHART. From this country to Canada?

Mr. LOVERING. Yes.

Mr. ECKHART. No, sir.

Mr. LOVERING. None at all?

Mr. ECKHART. No, sir.

Mr. LOVERING. They do not grind it?

Mr. ECKHART. No, sir.

The CHAIRMAN. The hour of adjournment has arrived. You will have the floor to-morrow morning if you would like to continue.

Mr. ECKHART. Thank you.

Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, April 11, 1902, at 10.30 o'clock a. m.

FRIDAY, April 11, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. If it is the pleasure of the committee at half past 11 we will go into executive session to take up some matters that are waiting, if we have a quorum here at that time.

Mr. DAISH. I would like to inquire, Mr. Chairman, if the matter regularly set for this morning, continued from Tuesday, would be

likely to take precedence—whether the Mobile matter would care to take precedence—in this matter?

The CHAIRMAN. No; we will take that up later.

Mr. DAISH. Then I will yield the floor for the time being to Mr. Charles England, the Baltimore representative of the National Hay Association, and one of the committee to whom I referred yesterday.

Mr. LOVERING. There is one gentleman here who would like to get away and would like to be heard now. Mr. Mead, of Boston, is here and if there is no objection—

Mr. DAISH. We have no objection whatever to his being heard now.

The CHAIRMAN. How long a time would you desire?

Mr. MEAD. Not more than ten or fifteen minutes.

The CHAIRMAN. Very well; I will call your attention to the time in ten minutes.

Mr. MEAD. I think that will be sufficient.

STATEMENT OF MR. GEORGE F. MEAD, OF BOSTON.

Mr. MEAD. Mr. Chairman and gentlemen of the committee, upon the bill to amend the interstate-commerce law I appear before you as representing three business bodies—representing city, State, and national organizations. The national organization is the National Commission Merchants' League of the United States. That is composed of constituent bodies from 23 or 24 of the largest cities of the country. At their convention at Philadelphia in January they passed and adopted resolutions asking this committee to grant to the Interstate Commerce Commission such power as might enable them to enforce their findings.

The second body is the Boston Fruit and Produce Exchange, with 350 members, who have also asked, by a petition to their Senators and Representatives here, that requisite power may be given to this Commission that they may be able to enforce their findings against these unjust and exorbitant charges.

The Massachusetts Board of Trade, which is made up of 41 different boards of trade in the State of Massachusetts, also favors this measure, believing that the question is a vital one to all.

The National Commission Merchants' League and the Boston Fruit and Produce Exchange are made up of men who deal largely in food products and perishable products, and there is no class of merchants in the country to whom this matter of rates appeals more, and to no class of merchants in the country is the right decision of the question so vital and all important to the successful prosecution of their business.

The Interstate Commerce Commission stated recently that the freight rate determined to a great extent who shall transact the business, and where it shall be done, and who shall handle the goods. So it is important to this line of business, and we feel that at the present time, without the power to enforce their findings, they can not be of substantial benefit to the business community.

We realize that since 1886 that Commission has been of benefit, and during its first years was of great benefit to the commercial interests, but since the decision was given that they have not the power to enforce their findings we find that the help rendered to the business community is small indeed.

We had a concrete example of that in Massachusetts in 1890, when

the Boston Fruit and Produce Exchange brought a suit before the Interstate Commerce Commission, and the hearings were thorough and the subject was gone into very carefully, and the findings of the Commission were to the effect that "the gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and the fact being so found a reduction is ordered."

There was no question about the high charges and the poor service given to us at that time, but the result was that the railroad paid no attention to it whatever, and, although the decision was in our favor, it was a fruitless victory. That was in 1890. There were three commissioners at that time—Veasy, Morrison, and one other whose name I do not recollect at the present time.

The CHAIRMAN. You say that no attention was paid to that decision?

Mr. MEAD. No, sir; no reduction was made, and they practically ignored the findings of the Commission. Under those circumstances, Mr. Chairman, we find that the business men are loth to prepare a case and bring it before the Interstate Commerce Commission, feeling that whatever the decision may be, even if it is in their favor, no distinct advantage or gain can come to them unless the railroads choose to follow out the findings of the Commission.

The CHAIRMAN. What was the rate complained of?

Mr. MEAD. The rate was excessive and the service poor.

The CHAIRMAN. What was the rate complained of?

Mr. MEAD. The rate was on carloads of peaches coming from the Delaware peninsula to Boston. Do you mean the amount?

The CHAIRMAN. Yes.

Mr. MEAD. That I do not remember.

The CHAIRMAN. Is the rate the same now?

Mr. MEAD. No, sir; the rate has been lowered since.

The CHAIRMAN. It has been lowered?

Mr. MEAD. Yes, sir.

The CHAIRMAN. What was the defective service complained of?

Mr. MEAD. It was delay in taking the fruit from the New England Railroad and bringing it to Boston over the New Haven road instead of giving us New York and New England delivery.

After that the legislature made an investigation as to the New York and New Haven Railroad.

The CHAIRMAN. Has the complaint been removed since?

Mr. MEAD. To a certain extent, but not to the extent of the findings of the Commission. We have in Massachusetts a railroad commission which has simply the power to recommend, but its recommendations are not mandatory, but it so happens that in the State of Massachusetts I think that has always been equivalent to a mandatory order, and that in no case have the findings of the State railroad commissioners been ignored by the railroads; but we do not find that outside of Massachusetts, and recently the State of New York, as I think you know, has been considering that mandatory powers be given their railroad commission. We feel that at the present time the distinctions and the rebates that are given to these larger bodies act as a very unjust and very unfair handicap to the business men at large.

The case that we brought before the Commission was fully heard and the final hearings were here in Washington, and the Pennsylvania Railroad was the line upon which most of that freight originated and

they decline, as the result of that finding, to make any reduction whatever. We feel that Congress, having passed the interstate-commerce act, thereby created this Interstate Commerce Commission, has exercised a limited supervision over the railroads of the country, and we feel that that ought to be carried to its conclusion, that is to get any real practical benefit from it. In other words, the railroads are public-service corporations.

We realize that there are only two ways to control public-service corporations, either by competition or by supervision, and as you gentlemen well know, the matter of competition would not obtain in the railroad circles, that while in competition outside of that, when one or the other company is driven to the wall, that ends it; but not so with the railroads, because under the guise of a receivership they can go on and inflict incalculable injury upon the other lines, and we feel that the Government is the proper power to exercise supervision over these public-service corporations. Of course, you are familiar with the findings and the reports of the Interstate Commerce Commission. Railroad managers have made no attempt to conform their practice to the spirit of the law.

In the report for 1890 it says:

It is universal experience that capital takes advantage of competition, and if public transportation can be bought and sold like a commodity, the largest purchaser will some of the time, if not all of the time, get the best terms; while the smaller dealer, and the man of moderate means, will find that he is being discriminated against, and what is most unfortunate of all, these discriminations favor the few and oppress the many.

We know, Mr. Chairman, that through the rebates given to large corporations, they are enabled to drive out the men of smaller means.

Something is being said just at the present time, and I believe that a Massachusetts man has introduced something along that line, of investigation of the beef trust, so called. Now, they have for years confined their business largely to the beef business, but at the present time they are going outside of that and taking in food commodities of different kinds, butter, cheese, eggs, poultry, so that they propose to get, as it were, a monopoly of the food products. They make their own prices in the West, and I know from a bit of personal experience that I had last year they go into Western cities where a man has built up a trade in the last fifteen years, they go in there and say to that man, "We want your business. We will give you a certain amount of money to work for us, and if that is not agreeable to you we will put a man here and drive you out of business;" so that they control the products there.

The CHAIRMAN. That is a very astonishing statement to make in a free country in regard to free white men. What evidence have you to substantiate that statement?

Mr. MEAD. When I was in the West in January last I went in towns there where they simply stated to me that those men come in there and make that statement to them.

The CHAIRMAN. Will you give us the names, so that we can pursue that investigation?

Mr. MEAD. I can give you names.

The CHAIRMAN. We hear a great many similar charges of a similar character to that. If they are true—and of course I do not mean to intimate that you do not regard them as true—the public ought to

know it, and somebody ought to take the responsibility of making the statement in such a way that we can secure a public knowledge of the facts, and the matter be brought, if nothing else, to the attention of the grand jury.

Mr. MEAD. I realize, Mr. Chairman, that you desire specific—

The CHAIRMAN. Of course I do not want to embarrass you, but if you can do that without any detriment to yourself, if you are willing to take the responsibility of it, we will investigate a matter of that kind. I know there is not a member of this committee who would not insist upon following up a statement of that kind, and on putting the responsibility upon the men who have attempted to use a statute of the Federal Government for such oppressive and tyrannous purposes.

Mr. MEAD. I will endeavor to give you specific cases. I have been through the Western States where that method of getting control of the products is used, and, of course, they will endeavor to cover it up as well as possible; but what I say is this, that they go there and secure control of these products, and then their rebates and their discriminations—their goods being carried in their own refrigerating cars—give them a distinct advantage over an ordinary business man.

In talking with the traffic agent of a railroad a short time ago he said, "We have 450 cars a week from such and such a company, and even if their requests to us are somewhat unreasonable we simply have to acquiesce, because of the amount of business that they do."

The CHAIRMAN. Will you give us the name of that railroad official?

Mr. MEAD. The official I do not know that I ought to name to you. I do not know that I ought to give you the name.

The CHAIRMAN. You see what the difficulty is. There are many men who give attention to the subject who believe that the law is ample for effecting a remedy to every evil that you complain of as it is now; that the law is ample, and that gentlemen like yourself, who have a knowledge of the facts, will not give the information to those whose duty it is to enforce the law. The law can not enforce itself. It must be done through the medium of the courts, and if you gentlemen who know of these infractions, who have the proof in your own hands, refuse to use it, "What better," many people say, "will be the conditions if additions are made to the law?" Somebody has got to execute the law.

Of course, I do not want to embarrass you, if you do not desire to give the names of these persons, but if you will give them I think this committee will see that proper publicity is given.

Mr. MEAD. You see this specific charge that I have mentioned was made in conversation with this traffic manager when we were complaining of existing evils, and in the course of conversation he said, "We have to extend courtesies, and you can readily see how that would be, with this company giving us 450 cars a week, that, figured into a year, is a very large amount of business."

The CHAIRMAN. Did you understand from his use of the word—he used the word "courtesies" or "favours," did you say?

Mr. MEAD. I could not recollect his exact language, but what he sought to convey to me was that a company giving them 450 cars a week could insist that they should give them some accommodations and some favours that would not be accorded to the ordinary shipper.

The CHAIRMAN. Did you understand that they gave their favours or

discriminations in the way of rebates from the charges which they made to other people?

Mr. MEAD. No, sir; we were not discussing then the matter of rebates. It seems to me that has been thoroughly covered by the recent reports of the Interstate Commerce Commission. They reported that discriminations were made in favor of these refrigerator-car companies. We think that the amendment which is before you should give to the Interstate Commerce Commission proper authority, not to fix rates primarily, but after a fair and impartial investigation has been had, and it is shown that unjust conditions exist and that rebates have been given, under those conditions we feel as though some authority should be given to the Commission to enforce their findings.

Of course, that matter can be covered entirely by published tariffs. If they are published and lived up to, the business community is placed upon a level. But, going back to what I was speaking of before, the getting control of the products of the West, they have an opportunity to bring them here in their refrigerator cars, and poultry can be brought in the beef cars. It was stated to me last week in Boston that where they had a large shipment of poultry that it was sold inadvertently to a dealer on the market who went out and bought it, 50 or 100 boxes of poultry, at the market price, and the manager seemed very much wrought up over it, and said that he would rather that it had been sold at half a cent less to a retailer than that it should have been sold to another dealer; which shows that they are seeking to build up a business with the retailers and the hotels.

So that we feel that the business men are being at the present time subjected to unfair conditions, and we hope that relief may be given to us, because if those great corporations who have these rebates can buy their goods in the West and ship them to the East and sell them practically at cost, and make a profit that the local man can not, he will be driven out of business. They simply want you to make the interstate-commerce law so that it will give them the power so that all the business men and dealers of the country will be placed upon a level. We do not feel that it is the case to-day. Whether by the Corliss bill, or whether under a bill that shall be drawn by this committee, we simply ask for that power. The board of trade indorsed specifically the Corliss bill. The other parties to which I have alluded did not. They simply prayed Congress to pass special legislation such as might be necessary to give the Interstate Commerce Commission power to enforce their findings.

Mr. MANN. You say that the refrigerator people, Swift & Co., and Armour & Co., and Hammond & Co., are shipping large quantities of poultry?

Mr. MEAD. Yes, sir; this year they have done so. They have taken on the poultry, egg, and butter business and have put vast quantities into storage in the West. They control, as you know, refrigerator plants all over the West, and also have put large quantities into storage in the West—cold storage.

Mr. MANN. Where do they get the poultry and eggs?

Mr. MEAD. They have gotten them from the West by making contracts with some shippers—shippers who ship the highest grades of poultry; they would endeavor to get them to work for them. They have bought out their business or taken over their business wherever

they could, and induced the man carrying on the business to go to work for them. In other cases, with some of my own shippers, they make a contract with the man who has a business there, agreeing to pay him half a cent a pound advance on all poultry he takes in. They adopt different methods to meet the different conditions at the different cities and towns.

Mr. MANN. They pay a little higher price than an ordinary commission man does?

Mr. MEAD. Yes, sir.

Mr. MANN. And they put these things in cold storage and keep them until the proper time for shipment?

Mr. MEAD. Yes, sir; and it is a profitable business. Poultry is higher this year than for many years before, and eggs the same way.

Mr. MANN. And when they take it east to Boston and Massachusetts they want to sell it directly to the consumer?

Mr. MEAD. Yes, sir; they are seeking to push aside what we call the ordinary commission man, the middleman. We thought that it was a strange statement for a man to make, that he would rather sell his poultry at half a cent less to retailers than for a fair price to a man who would buy 50 or 100 boxes at a time, and that illustrates the conditions.

Mr. MANN. They are endeavoring to eliminate the cost of commission?

Mr. MEAD. Yes, sir; and as you know, they have houses in all the larger cities throughout the country.

Mr. MANN. You think the interstate-commerce law ought to be amended so that the commission men would be protected against them?

Mr. MEAD. Yes, sir; that is the pith of what we desire to accomplish. We think that running their refrigerator cars and lines as they do, they have a great advantage.

Mr. LOVERING. Who owns those cars?

Mr. MEAD. Swift & Co., Armour & Co., Nelson Morris & Co.—

Mr. LOVERING. Are the railroads obliged to carry those cars whether they want to or not?

Mr. MEAD. Yes, sir; they are. That saves them the cost of equipment, and they pay those car companies three-quarters of a cent mileage, I understand. I have not any definite knowledge as to that.

Mr. LOVERING. Do you understand that any man can put on a refrigerator car and compel it to be carried?

Mr. MEAD. A great many are to-day, and many of the smaller concerns are doing that. You frequently see in going through these smaller towns packing houses who have their own cars of various kinds. They get a mileage from the railroad. I understand that the Santa Fe Railroad this year is taking steps to provide its own cars and thereby throw out of service the 6,000 cars now running on that road.

Mr. LOVERING. Will they throw them out when they get their own service?

Mr. MEAD. That is the statement in the papers. Of course, in the California orange trade there are thousands of cars. I understand that lately Swift & Co. bought out the C. F. and D. Company, and that is now merged into Swift & Co., or it may be Armour & Co.

Mr. LOVERING. Would not the railroads carry cheaper in those cars than in their own cars?

Mr. MEAD. I do not know but what that is true.

Mr. LOVERING. Is it not reasonable to suppose that that would be true?

Mr. MEAD. Yes; they would save the cost of the cars and the maintenance, and that is why they can pay them three-quarters of a cent.

Mr. LOVERING. Is not that a sufficient reason why they make lower terms and rates with those people?

Mr. MEAD. Yes, sir; but at the same time the rate ought to be made the same. They can pay the car company a rate of three-quarters of a cent a mile; but whatever mileage they do pay them, that will save them building the cars and save them some cost; but the open rate should be the same to all shippers.

Mr. MANN. Is it not a fact that the open freight rate, eliminating any special rate, is the same to the shippers in cars owned by themselves as it is to anyone else, and the only difference is that the railroad pays to the owner of the cars the mileage for the use of the cars, and that is all?

Mr. MEAD. Yes, sir.

Mr. MANN. That is the way the operation is carried on?

Mr. MEAD. Yes, sir; although I know in some cases they pay the icing charges direct to the car company. I think in the peach business they pay the freight to the railroad and the icing charges to the car company, but sometimes the railroad collects both charges.

Mr. COOMBS. In reference to the shipment of California fruit, is there that rebate of which you have spoken which pertains to the shipment of poultry and beef in the West?

Mr. MEAD. I am not familiar with that, because we do not handle any California fruit.

Mr. COOMBS. You do not know about that?

Mr. MEAD. No, sir.

Mr. COOMBS. Do you know what cars they are shipping now—who own those cars?

Mr. MEAD. The C. F. and D., Nelson, the Armour Company, and the Swift Company. I think that the Swift Company has recently acquired the C. F. and D. The papers have stated recently that the Santa Fe road was building a number of thousand refrigerator cars, and that another year they would carry the freight in their own cars and do away with the cars belonging to these private individuals and companies.

I think, Mr. Chairman, that covers the ground that I had in mind—the fact that as public-service corporations these railroads should be subjected to supervision, and that will control where competition will not. We would not think in any one of our cities where we had street railways and electric lighting service of letting another company come in except under proper regulations, and it must be shown in a case of that kind that the public convenience requires another company. We do not want poles duplicated, and streets dug up, and things of that kind unless the other company is needed, because otherwise it will be the two competing companies, and one would buy up the other, and the company would have to pay an increased cost on account of the plant taken over and new securities issued, and it seems to me that should be the attitude of Congress toward the railroads.

I thank you very much, gentlemen.

STATEMENT OF MR. CHARLES ENGLAND.

Mr. ENGLAND. I am here as a representative, with Mr. Daish, chairman of the committee of the National Hay Association, to advocate the present bill, which you are now considering.

The National Hay Association is distinctively a business men's organization. It is more national in scope, perhaps, than any other organization in this country. Its membership amounts to between 750 and 800, residing in all the principal producing States of the Union.

The production of hay, its value, its importance, is very generally overlooked, and I have only to remind you that the production of hay in the United States in 1900 was about 56,000,000 tons, and the value about \$450,000,000. Those are figures from the Department of Agriculture. It is of more value than the wheat crop, the oat crop, or the rye crop, and is second only to the corn crop. The crop of corn in 1900, which was a phenomenal crop, was about 58,000,000 tons. The same year there were over 50,000,000 tons of hay produced. We have been discriminated against, and the point which I want to make now is that hay has been discriminated against as in favor of other articles, other commodities; that because of the recent classification, known as No. 20, issued by the classification committee of the railroads, which went into effect on January 21, 1900, hay was changed from sixth to fifth class.

It had been in the sixth class, with the exception of a few months for, I think, ten or twelve years. There had been no complaint as to the fairness of that rate. The railroads had been glad to carry it and glad to receive it. But most arbitrarily and, we think, in a most unfair manner, the notice not being sufficient for any man to adapt his business to changed conditions, that rate was changed. The National Hay Association protested, but without effect, and after it had been given six months' trial the association again went before the classification committee and showed this discrimination and its bad effect, and that it was injuring the business, and we were received almost with indifference.

Since that time the matter has been taken before the Interstate Commerce Commission, and the case is now pending before them, but we fear that under the decision of the Supreme Court of the United States they will not be able to effect any remedy for us, although we think we have shown them the fairness of our contention.

Mr. Chairman, the question was raised here yesterday, or the day before, as to whether these rates, these discriminations, affected the farmer. I think I can show you in regard to hay that they do. Out of our crop of hay of 56,000,000 tons the States west of the Mississippi River, including Wisconsin, produced about 26,000,000 tons, very nearly one-half of the hay crop. Wisconsin, Minnesota, Iowa, Missouri, Nebraska, South Dakota; Iowa leading with a crop of about 5,000,000 tons. Those are figures from the Department of Agriculture. They do not refer to wild grasses or pasturage, and to remind you of that, the great State of Texas is only credited with a hay crop of 480,000 tons, while the small State of Maryland is given a crop of 380,000 tons.

The CHAIRMAN. How much of that hay from the State of Iowa goes to markets outside of the lines of the State?

Mr. ENGLAND. We have not those figures. Those would be impossible to obtain, as to exactly the disposition of the crop.

The CHAIRMAN. Take the 26,000,000 tons that are produced west of the Mississippi River, including Wisconsin, as you say—what has gone East or gone to those markets of all of that quantity?

Mr. ENGLAND. I think in the last two years not one ton of that hay has come East. When I say East I mean the Eastern seaboard markets.

That is what I was coming to. Taking this hay from the sixth class and putting it in the fifth class increases the freight on hay from \$1 to \$2.60 a ton, according to the distance of the haul and the location. Prior to that we in Baltimore frequently brought hay from west of the Ohio River. We shipped hay from Ohio and Illinois and Wisconsin, and all the Western States. I have been in the hay business for well on to twenty years, and prior to this time we considered Illinois and eastern Iowa our best sources of supply, but in the last two years I have not handled a carload of hay from Illinois, and very little from Indiana, and our sources of supply are Ohio and southern Indiana.

The CHAIRMAN. Is that the result of the increased railroad rates, or is it the result of the higher price of beef cattle which induces the farmer to put all of his hay into his cattle on his farm?

Mr. ENGLAND. Well, I believe that it is the result of these high rates.

The CHAIRMAN. Is it not true that with cattle at 5 cents and 5½ cents a pound on the farm that hay is worth on the farm from \$16 to \$17 a ton to the farmer.

Mr. ENGLAND. That is a question I could not go into, not knowing anything about that business. But we all know that there has been a great increase in the cattle raising all through the country. At the same time, we know that, taking the prices of hay in the State of Iowa—perhaps not to-day—this has been a peculiar year because of the drought through the South and West, when there has been an increased demand for hay—but had the old rate been maintained we could have brought hay from those States under many conditions. Hay is being exported to-day from our ports to Europe.

There has been a better demand for our hay this year than for many years before. Owing to the war in South Africa the English army has been obliged to carry hay from Liverpool and Belfast and Cardiff to meet the demand, and if we had had the old rates to-day, which, as I say, were \$1 to \$1.50 less than those of to-day, we could have exported much more hay than we have been doing, and in that way the farmer has not been able to market his hay and get a price for it, and we have been cut out of that business.

Mr. MANN. Has not there been a shortage of hay in Illinois and Iowa during the past two years?

Mr. ENGLAND. I do not know about that exactly, except for the crop of 1901, and the crop that Illinois raised in the year before. The figures of the crop of 1901 were 53,000,000 tons, according to the original estimate. The crop preceding that, on which I am basing my statement, was 56,000,000 tons.

Mr. MANN. How was it three or four or five years ago?

Mr. ENGLAND. Why, it has ranged from 45,000,000 tons up to, I think, about 56,000,000 or 57,000,000 tons. That is going back to a time of ten years ago. The crop of Illinois in 1900 was 2,350,000 tons.

Mr. MANN. How has the price been on hay for the last three or four years?

Mr. ENGLAND. With the ordinary market fluctuations from time to time, it has averaged probably a dollar and a half a ton, in the last two years, higher than it was, taking the average of fifteen years before that. The price has been a little better. It has had to be better at the seaboard to meet this advance in rates.

Mr. MANN. Take the Chicago market. That is not affected by these conditions?

Mr. ENGLAND. I have not those figures definitely. I would not like to express merely my opinion, but we have watched the Chicago market from time to time and we have not had any opportunity in the last two years to buy hay there and bring it here. Heretofore we have been able to do it, but lately we have not.

Mr. MANN. This rate that you speak of is from Chicago and points east—

Mr. ENGLAND. Yes, sir; this rate refers to all points in that territory that I have mentioned.

Mr. MANN. I say the Chicago basic points. In what class is hay in the Western classification?

Mr. ENGLAND. I do not know as to that.

Mr. MANN. You say that hay now is in the fifth class in what is known as the official classification; that is, east of the Mississippi River?

Mr. ENGLAND. Yes, sir.

Mr. MANN. How is it in the Southern classification?

Mr. ENGLAND. We do no business in the South. We do not know about that. This refers to the classification north of the Ohio and Potomac rivers.

But, Mr. Chairman, we have stated that discriminated against in favor of other commodities. The question was raised here about the capacity of the cars having some effect on the question. Now, I have brought with me to-day two freight bills, which will probably better illustrate it than any other matter, one for a car of hay and the other a car of oats, shipped from the same point by the same shipper in Michigan to the same party in Baltimore, coming into Baltimore over the Pennsylvania line, one of the carloads delivered to a local elevator, and the hay delivered to the terminal warehouse, the hay warehouse of the railroad, situated within 250 yards of the elevator. This is under classification No. 20, which we complain of. The car of hay was 21,190 pounds. It paid a rate of 24½ cents, and the freight paid was \$51.92. The car of oats from the same party, shipped to the same point, contained 33,000 pounds, at a rate of 10½ cents, and the freight paid was \$34.65.

In other words, the railroad company hauled 33,000 pounds of oats from the same point to the same point for about \$17 less than they charged for this very much smaller amount of hay.

Now, I will say that since that time there has been an advance of 3 cents per 100 pounds on grain more than it is on hay. Therefore it does not make my argument quite as strong.

Mr. MANN. What is the date of those bills?

Mr. ENGLAND. Those bills are about two years old.

Mr. MANN. What is the date of them?

Mr. ENGLAND. They were selected because it is but seldom that you

can find two cars shipped from the same parties to the same parties of different commodities.

Mr. MANN. What is the date of the bills?

Mr. ENGLAND. April, 1900.

Mr. MANN. That is after the lake traffic is over?

Mr. ENGLAND. Since that time there has been a change on grain of 3 cents per 100 pounds, making the rate $13\frac{1}{2}$ cents per 100 pounds, which would make that cost of transportation about \$9 more. The rate on hay remains the same, and to-day this would show up in this way. The present freight rate on grain from Durand to Baltimore is $13\frac{1}{2}$ cents; the present rate on hay from Durand to Baltimore is $22\frac{1}{2}$ cents. Upon this basis the cost of transportation of 21,190 pounds of hay at $24\frac{1}{2}$ cents is \$51.92; the cost of transportation of 33,000 pounds of oats at $13\frac{1}{2}$ cents is \$44.55. So that even to-day the railroad company would haul 22,000 pounds of hay and charge more for it than they would for half as much again of oats, showing that the capacity of hauling of hay does not enter into—

Mr. RICHARDSON. Is there not something in the question of the commodity to be handled and the facility and ease with which it can be handled?

Mr. ENGLAND. I do not think that at terminal points it takes any longer to load a carload of hay than it does a carload of oats; that is, at the terminal house; they both go to the public warehouse.

Mr. WANGER. How about the matter of space taken in shipping?

Mr. ENGLAND. They take the same space. That is the point that I wish to make.

Mr. RYAN. It is of less weight.

Mr. RICHARDSON. Who is complaining about that?

Mr. ENGLAND. The National Hay Association is complaining that hay has been discriminated against.

Mr. RICHARDSON. Why?

Mr. ENGLAND. By this unjust classification. Hay has been put in the fifth class from the sixth class, whereas it used to be uniformly in the sixth class, and that has prevented business to that extent.

The CHAIRMAN. What is the reason given by the carriers?

Mr. ENGLAND. They have never given us any real reasons.

The CHAIRMAN. Did they make no argument at all because of this seeming unjust discrimination?

Mr. ENGLAND. I have not heard of any, sir. I have not heard of any arguments they have made. They heard our arguments and simply ignored them.

Thereupon, at 11.45 a. m., the committee adjourned until to-morrow, Saturday, April 12, 1902, at 10.30 o'clock a. m.

SATURDAY, *April 12, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. E. P. BACON—Continued.

Mr. BACON. Mr. Chairman, I would like to present in connection with the subject that was discussed the other day, in regard to the *owers* of the Commission, a statement which appears in the Interstate

Commerce Commission's report for 1897, the eleventh annual report, which is as follows:

But it (the Commission) further understood that when, as in this case, the rates had been established by the carriers and afterwards challenged or complained of as unreasonable and the question of unreasonableness had been tried, the Commission could declare not only what rate was wrong, but what would be right. That is to say, when a rate had been established by the carriers, challenged by or on behalf of the shippers, and tried by the Commission in a proceeding ordered and regulated as near as it may be in conformity with United States court proceedings, the Commission had a right, and it became its duty, when justified by the facts, to declare the rate wrong, decide what rate would be right, and through the judgment of the court compel the carrier to perform its legal duty to receive and carry property at rates which are reasonable and just.

The Commission exercised this power in a case commenced in the second month after its organization and continued to exercise it for a period of more than ten years, during which time no member of the Commission ever officially questioned the existence of such authority or failed to join in its exercise. As already stated, the authority of the Commission to modify and reduce an established rate and to enforce a reasonable rate for the future was not questioned in the answer of the defendant in the Atlanta rate case, decided March 30, 1896, nor had it ever been denied in any of the answers made to more than four hundred cases previously commenced, many of them alleging unreasonable and unjust charges and praying the Commission to enforce a reduction and lower rates in the future.

I wish to state that the power which has been exercised by the Commission during the ten years referred to in these extracts, and the existence of which was denied by the Supreme Court, was not denied on account of any question as to the constitutional right of Congress to confer that power, but simply on account of the point that the act itself did not express it specifically. And I wish to say further that during that period while that power was exercised no complaint was ever made by any of the carriers of a rate that had been substituted or ordered by the Commission as being unjust or as inflicting any hardship upon the carriers. But the validity of the order was questioned only on the point as to whether the Commission actually possessed the power to make such an order.

One question that was asked the other day I would like to say a few words in relation to, and that is as to the rightfulness or the legality of requiring the Commission to take all of the testimony in case of an appeal, to take any additional testimony which might be desired to be offered by either of the parties to the case. It seems to me that the apparent difficulties which exist in relation to the rightfulness of this arise from the fact that the Commission has been regarded as a judicial body. That is not the case. It acts as an agent of Congress in exercising legislative functions of making a rate, of prescribing a rate, after finding that the existing rate is unjust or discriminating, and that as an administrative or legislative act it should and must necessarily, and ought in fact, to go into immediate effect as any legislative act does; and parties who question its rightfulness have their remedy in an appeal to the courts for a review of the question as is provided in the Corliss bill. My idea is simply this, that an act of the Commission, not being a judicial act, there is no reason why it should not go into immediate effect, being a legislative or administrative act instead of a judicial one.

The CHAIRMAN. You regard the fixing of a rate as a legislative act?

Mr. BACON. As legislative, yes, sir; and as all legislative acts must necessarily go into immediate effect, and then parties who object to the effect of that act have their remedy in the courts, and while it is being tested in the court it is in operation and effect, and any loss

which may be sustained by it by anybody is one of those contingent results which can not be provided for. But in point of fact, during the ten years when this authority was exercised, no railroad company ever claimed that it experienced any hardship or suffered any wrong in consequence of the acts of the Commission. Experience is far better than theory.

The CHAIRMAN. Have we had any experience in procedure such as is now proposed during the ten years you speak of?

Mr. BACON. Yes; we have had continuous experience on that direct line. Numerous cases have been decided by the Commission in which a rate has been fixed.

The CHAIRMAN. Yes; but when they fixed a rate they did not attempt to enforce that rate. If it was to be enforced, if it needed any further power, they had to go to the court.

Mr. BACON. They had to go to the court.

The CHAIRMAN. The court then rendered its judgment.

Mr. BACON. They had to go to the court if the railroad did not obey the order.

The CHAIRMAN. If they did not obey it.

Mr. BACON. So that during the ten years of that time, or most of that time, eight or nine years, the railroads almost universally complied with the rates of the Commission and the rates it prescribed were promptly observed, it being regarded by the railroads at that time as a proper function of the Commission and the orders were obeyed and the rates put into effect which the Commission prescribed; and as I say, no one ever claimed them as being wrong and no railroad ever suffered from that practice on the part of the Commission, and that practice, I say, is far better than any theory. We may theorize as to what possible results may be and yet when we have had ten years of experience it is worth far more to us than any theorizing of what may occur to us in the future, and having had that experience—and it having resulted satisfactorily, not only to the public but to the carriers themselves—that is the best warrant in the world for reinvesting the Commission with that particular power.

The question was asked the other day if bonds should be given between those two parties, the complainants on the one hand and the railroads on the other; but that is utterly impracticable from the nature of the case. The party who pays the freight is very rarely the one who bears it ultimately. He is the middleman. The great bulk of transportation of the country is carried on by middlemen, and freight paid by them is immediately added to the cost of the goods, and follows the goods, and is paid by the consumer in case of merchandise, and in case of agricultural products the freight to be paid is deducted from the value of the product at the point of production, and is borne in advance by the producer.

Consequently there are no parties who can give bond during the pendency of the case who are the real sufferers, and the man who has paid the freight is not a sufferer at all, although the rate may be excessive and exorbitant and unjust in other respects; yet he has paid it, and has recouped himself by charging it on the goods, and he has actually recovered it in that way, and there is no remaining direct or personal interest in it whatever. Hence, the impracticability of providing bonds as has been suggested, and hence the necessity of providing an entirely different method of treatment for cases relating to the

freight to that relating to claims between individuals. It is absolutely essential that they should be treated in an entirely different manner, because of the difference in the nature of the case. This treatment can only be provided by carrying into effect the rate prescribed by the Commission, when, upon full investigation, the rate is found to be unjust or unreasonable.

Upon the question of the constitutionality of some of the provisions of the bill I would like to file a pamphlet entitled "Power of Congress over Interstate Commerce," which cites numerous cases which have been decided by the Supreme Court in relation to the governmental supervision over rates of freight and passage. It is an able legal document.

I will give way here to Mr. Jones, the chairman of the National Grange.

APRIL 4, 1902.

NATIONAL AND STATE ORGANIZATIONS.

Grain Dealers' National Association, Indiana State Board of Commerce, Illinois Manufacturers' Association, Kansas Millers' Association, Michigan State Millers' Association, Millers' National Association, Millers' National Federation, Minnesota Retail Grocers and General Merchants' Association, Missouri, Kansas and Oklahoma Lumber Association, National Board of Trade, National Dining Table Association, National Wholesale Druggists' Association, National Live Stock Association, National League of Commission Merchants, National Retail Grocers' Association, National Hay Association, National Wholesale Lumber Dealers' Association, Nebraska Retail Grocers and General Merchants' Association, New England Shoe and Leather Association.

New England Granite Manufacturers' Association, Ohio Grain Dealers' Association, Ohio State Association Patrons of Industry, Oklahoma Millers' Association, Texas Cattle Raisers' Association, Texas Millers' Association, Utah Live Stock Association, Winter Wheat Millers' League, Wisconsin Cheese Makers' Association, Wisconsin Retail Hardware Dealers' Association, Wisconsin Retail Lumber Dealers' Association.

LOCAL ORGANIZATIONS.

California.—Claremont Citrus Union; Colton, San Bernardino County Fruit Exchange; Los Angeles Chamber of Commerce; Los Angeles, Southern California Fruit Exchange; North Pomona, Indian Hill Citrus Union; Pomona Fruit Growers' Exchange; Pomona, San Antonio Fruit Exchange; Porterville Board of Trade; Porterville, Tulare County Citrus Fruit Exchange; San Diego Chamber of Commerce; Santa Barbara Lemon Growers' Exchange; Santa Barbara, Santa Barbara County Chamber of Commerce.

Colorado.—Colorado Springs Chamber of Commerce.

Illinois.—Chicago Board of Trade.

Indiana.—Indianapolis Board of Trade, Indianapolis Commercial Club.

Iowa.—Davenport Business Men's Association.

- Kansas.*—Topeka Commercial Club.
Louisiana.—New Orleans Board of Trade.
Maryland.—Baltimore Lumber Exchange.
Massachusetts.—Brockton Board of Trade, Fitchburg Merchants' Association, Worcester Board of Trade.
Michigan.—Detroit Merchants and Manufacturers' Exchange.
Minnesota.—Duluth Produce and Fruit Exchange.
Mississippi.—Westpoint, Aberdeen Group Commercial Association.
Missouri.—Kansas City Board of Trade, St. Louis Builders' Exchange.
Nebraska.—Lincoln, Retail Grocers' Association; South Omaha Live-stock Exchange.
New York.—Brooklyn, United Retail Grocers' Association; Buffalo Lumber Exchange; Buffalo Merchants' Exchange; Middletown, Business Men's Association; New York Lumber Trade Association; New York Manufacturers' Association; New York Merchants' Association; New York Produce Exchange; New York Stationers' Board of Trade.
North Carolina.—Wilmington Chamber of Commerce.
Ohio.—Cincinnati Chamber of Commerce, Toledo Produce Exchange; Newark Board of Trade.
Oregon.—Portland Chamber of Commerce.
Pennsylvania.—Pittsburg Chamber of Commerce.
Washington.—Spokane Chamber of Commerce.
Wisconsin.—Milwaukee Chamber of Commerce; Milwaukee Merchants' and Manufacturers' Association; Milwaukee Association of Master Steam and Hot Water Heating Engineers.
Wyoming.—Muscoda Dairy Board.

**STATEMENT OF MR. AARON JONES, GRAND MASTER OF THE
NATIONAL GRANGE, PATRONS OF HUSBANDRY.**

Mr. JONES. Mr. Chairman, I will not detain your committee with any extended remarks upon these questions. Representing the agricultural interests of the United States as presented by our order, we are very much concerned to have an equitable law upon transportation. It is a question that more vitally affects the producing classes than any other classes in our country, as the statistics show that 60 per cent of the freights carried upon our vast railway systems are paid upon the products of agriculture. Hence, an unjust or unfair or inequitable freight rate is very detrimental to us. As has been remarked by Mr. Bacon the cost of the freight is immaterial to the freighter, because he takes it out in the purchase of his product and the cost falls upon the farmers.

I want to say that the farmers are not antagonistic to the railway interests. They do not desire legislation that will cripple or hinder the progress of the railroad development of this country; neither do they want to prevent them from making a reasonable and fair profit for the money and the energies engaged in transportation. But upon the lands in which these railways acquire their rights to build their roads over our property, where a difference arises between the owner of lands and the company seeking a right of way, where those differences exist, all the States have provided that a disinterested tribunal, not interested in the lands or in the company, shall sit and determine what are the damages to the individual for dispossession of this prop-

erty, and that we esteem to be right and proper. It is in the interest of the progress of our nation.

Now, after a railroad has acquired its right to build its road, if there should any contention arise as to the equity of transportation of any of the products which grow upon this or any other farm in that community, certainly it would be but just and fair that where that contention arises some commission should be able to examine this contention and determine, as in the one case, also in the second case, what would be right and fair, and then we would be placed upon an equality.

The management of railroads has been in the past, in some respects, regardless of the interests of the producer or the interests of the farmer.

In the classification of freight they have made it prohibitory to market some products, so that they are absolutely worthless, because the producers are unable to pay the freight charges upon them. These charges are not in proportion to the cost of carriage, as we understand it. In cases of that kind it seems to me that the farmers ought to have a remedy, and that remedy ought to be provided by the National Congress. For many, many years our organization, in its subordinate granges scattered through 41 States of this Union, have met in our State assemblages, our national assemblages, and have continually presented this claim and pressed it upon Congress to give us a remedy.

We have carefully examined the Nelson-Corliss bill, and we believe its amendments to the original interstate-commerce act are just, fair, and equitable, and that they will provide the remedy that we have sought. That remedy is that when the Commission has examined a case clearly and fully, and determined, whatever their finding may be, the railroad companies must obey that finding, and thereafter carry the product at the rate of the finding of the Commission until it has been reviewed and set aside by the courts.

There is not any other protection that the farming interests of this country can secure. We are handicapped. The value of our lands all depends upon the management of the railroad corporations. The rapid combination and consolidation of these roads under a single management makes it more imperative at this time, and more and more forcibly is the necessity felt that we should have legislation, such as we ask now, than in any other period in our country's history, because we are absolutely at the mercy of the transportation interests of the country.

I believe that the loyalty of the farming population to our country is unquestioned. They are willing to pay their proportion of the country's expenses, and they are also willing to stand for its defense, and this is the only remedy we have for our protection. As isolated individual farmers they are unable to make any contention or go into the courts to seek a remedy. They are unable to pay for it. They are absolutely shut out.

It would seem to me that the Congress ought to provide this remedy for us and protect its weakest citizen as well as its strongest corporation. I believe the safety, I believe the liberty, and I believe the loyalty of all the people of this country depend upon laws which shall fall justly upon all its respective classes. If the farmers of this country become thoroughly impressed with the idea that the Congress that they have elected does not take cognizance of their necessities, and

will not protect their rights, you will find that they will become a very dissatisfied class, which they should not be. Naturally, they stand by the Government and stand by its laws, and they wish that Congress would pass a law that will compel every other class of citizens to abide by them.

This consolidation of transportation interests that is taking place absolutely prohibits, or absolutely takes away, all the possibilities of freight rates being regulated by competition. If competition is left free to act and let money be invested in building roads, and then roads act independently of each other and competition rules and regulates the prices, we have nothing to say. But such is not the fact. In view of the action of the railroad companies themselves, in placing under a single management over half of the railroads of this country, it seems to us that we have got to look for the remedy to Congress.

As to the bill that is now before your committee under consideration, we believe that this bill, if reported, by the authority and force that will be given to it by this committee, will probably become the law of this country, and it will do no injustice to any railroad or transportation interests of the country. It will mete out justice to the farming population. Sixty per cent of the freights of these roads are the freights of the American farmer, and according to published statistics—and you are familiar with them—a large proportion of our export trade—between 60 and 70 per cent—is also the product of these same farmers.

We know that evidence to substantiate our claim has been submitted in detail, or will be, by the Interstate Commerce Commission, which has been taking evidence regarding the wonderful discriminations that the railroad companies have seen proper to practice between different localities and different shippers. Now, this affects injuriously, very injuriously, the value of farms along the roads. Last winter I had occasion to look up the matter, and I found that wheat was being carried right through my town for 4 cents a bushel less than we could ship it for from my town, or from Chicago to New York. That was very injurious and very detrimental to every bushel of wheat that was in my granary. It lowered the value by three or four cents a bushel of every bushel of wheat I had and absolutely prohibited me from shipping it; and I only speak of myself because it is a common case with all the farmers of our country.

These matters are important to us, and while the farmers are not able to complain in the same way that others may, they have not the money to come before your committee in large numbers individually, because they are not a moneyed class of men, they are depending on the wisdom, the justice, the fairness of the men they have sent to Congress to see that their interests shall be protected.

In 1887 this interstate-commerce bill was passed, as I understand it, in the first place. It acted very smoothly, very satisfactorily, and the saving of freights at the rates that dominated in 1887, if those freights had been continued through the entire ten years in which this law was in practical operation—the difference in the saving that would have been procured would have amounted to \$529,000,000. Of that \$529,000,000, 60 per cent was saved to the farming population.

Now, I want to say, as a farmer, that grain growing has ceased to be profitable from the fact of the excessive freights that are charged to us. I operate something of a farm, but I have absolutely quit grow-

ing grain, because I can not afford to pay the freights. And so it is with all the grain-raising farmers of Indiana. We are going out of it as fast as we can change our methods of farming. Now, we do not think that it is right that the Congress of the United States should allow any class of people to so conduct their business as to drive us out of our business.

Mr. DAVIS. How do the freight rates now on grain compare with the freight rates in 1887?

Mr. JONES. They are 25 per cent higher, and that is a very serious embargo.

Mr. COOMBS. Is that confined to the railroads, or does it take in the ocean carriers?

Mr. JONES. That goes to the seaboard. I understand there are rates fixed for the export trade which make it very much cheaper. That is the reason why I speak of this particular instance. Contracts, I am informed, were made about a year ago three to four cents cheaper because it was export grain. And then I understand that some of this export grain is taken off in New York and sold in the market there instead of being taken abroad.

Mr. COOMBS. Then when you say that wheat went through your town at three to four cents cheaper that difference was in the way of a rebate.

Mr. JONES. That was in the way of rebate; yes, sir. Now, this law provides that these rebates shall cease, and they ought to cease. There is no justice, there is no fairness, in one shipper having a different rate from another shipper. Every solitary man who handles a commodity ought to have the use of these public highways on fair and equitable terms. Nothing else will give to the seller a fair opportunity of selling his products or to the buyer of buying them.

This bill provides for this also, and that is a very important matter, and I believe to-day that the American farmer feels the necessity of this kind of legislation, and protection from these abuses, more than he does the necessity of any other legislation that can possibly be passed by the American Congress.

I know that there are a great many questions affecting other matters that seem to dominate now in the minds of the American people, but I want to say to the American Congress that if you will look at the condition of the farming classes of this country you will find that they need your guardian care just as well as any other people on God's green earth. There is no question about that in my mind, because the products of these men who are engaged in grain growing are so handicapped that they are unable to provide their children with the necessary amount of education so as to give them an equal show in the race of life. This is a condition that has been brought about by the unfairness, it seems to me, in the management of affairs, by combinations and trusts which have come into force with such power as to fix the rates, or practically so, both of the product of the farmer and that which he consumes, and he stands between the two stones which are crushing out the very life of his business, he needs protection.

I believe, on that basis, that the strongest law that could be passed against combinations and trusts would be one to the effect that every product, when it is shipped into the market, shall bear its just proportion of the freight, and no rebates should be allowed. I believe that if this law was enacted and was enforced it would regulate to-day

every trust there is in America, without any other legislation upon that point, because if they did not get these advantages which they receive from the transportation interests they would be unable to be of any serious danger or damage to this country.

Now, the farmers are in danger, and I want, in my position as the master of the national grange, as chairman of the legislative committee of the national grange, having communication with our 500,000 members weekly or monthly, as the case may be, to say that I believe I know the sentiment of the farmers upon this proposition, and it is unanimous. I care not what political party they may affiliate with, or what party they may sustain, upon this proposition they are united. They are looking to you, and as this pending bill is now before you for your consideration, I want favorable action on your part, and an urgent and persistent effort to carry it through both Houses of Congress would to-day be hailed by the farmers as the greatest act of deliverance to them, of them, that could possibly be had at your hands.

It would not be expected of me that I should go into the legal phases of this bill, which you are able, fully competent, to take charge of. The propositions that we want embodied into law are those that would bring about justice between the business interests of the country.

I was in the committee room yesterday when a gentleman from Baltimore was speaking upon the hay problem, and speaking upon the wheat problem. Now, the discrimination of the different classifications of freights, taking a certain product out of one class and putting it into another, and raising the price, has been prohibitory of trade—in some ways absolutely prohibitory, and that should not exist, should not be permitted to continue.

As to the difference between the freight on flour and that on wheat, I want to say that it would be to the best interests of the American farmer to have American wheat floured by American mills. We think it is to our interests to have it so floured, because then we have a continuous market. We do not ask any advantage for the American miller; we do not ask that his flour be shipped for one farthing per 100 pounds less than the wheat is shipped over these railroads for. That will place both these great interests in competition with each other, the shipper and the miller, and I say for the farming population it is to our interests to have all of our grain floured here, because it gives us a more regular market than the other would, and for the further reason, and the more important reason, that the by-products of the mill are absolutely needed by the farmers in America for fattening their stock, so as to keep the fertilization on our lands.

I want to say that the practice of the American farmer in shipping away his products to a foreign country and having them there milled and the by-products there used by the European farmer has been depleting the fertility of the American farms more than those who have not given attention to these matters would think, and it is an important matter—a very important matter.

This is an agricultural country, and an agricultural country, in order to maintain its position, has necessarily got to keep up the highest standard of the fertility of its soil, and that never can be done when you ship the raw material to some foreign country and let the foreign lands be enriched with our by-products.

So that all this would be changed to the largest degree by an equitable and fair rate of transportation.

I am no particular friend of the members of the Interstate Commerce Commission. I only believe that they are able, wise, and discreet men. Their long experience in the examination of railroads and freights gives them an opportunity to know what is right and what is fair. I believe that to fill a position upon that Commission requires the highest standard of honesty and intelligence. Now, I know that if they should be wrong, either in judgment or honesty, they have got a tremendous power, and in exercising that power they could do immense wrong to the shipper and immense wrong to the producer, as well as serious damage to the railroads of this country, but I believe that we have got to trust these matters somewhere, and I believe that these men are more liable to reach a fair and just conclusion than men who are engaged alone on the side of and in the interests of transportation.

As a farmer I have a few thousand bushels now in my granary that I wish to sell. If the matter was left entirely to me, and I should fix the freight rate for the shipment of that grain, you can very well believe that an Indiana farmer would not put that rate too high; in nine cases out of ten he would put it too low; because of the very selfishness and grasping disposition to get all that he could he would probably put it too low. Now, it would be unfair and unjust to place the vast sums of money invested in the building and management of railroads at the dictation of myself as a shipper, and to make the railroads accept the rates that I might see proper to offer them. That is unfair, and it would be unjust, and it would destroy the value of their property.

Turn the case over and let a railroad man, who has not a dollar's worth of interest in my farm or the farm of any other man who is a shipper—let him fix the rate. I do not believe, although I have a high respect for those men who build and manage the railroads and fix the rates, that they are more likely to fix a fair rate than I would be in their place. They would act and do act just as I would. I believe that they are as apt to fix a little too high a rate as I would be to fix too low a rate. Therefore we would lock horns with each other. Now, we ought to have some fellow who is not a shipper; some good, broad-minded, honest man, with a full knowledge of the case, and with a proper regard to the rights of citizenship in this Republic, who ought to have the case turned over to him and let him hear the evidence, let him decide what is right and fair and just between us.

I want to say to you, my friends, that the future destinies and the future prosperity of this country rest upon Congress seeing that justice is done along the line of these rate questions; and this question underlies to-day the destiny of more of the important industries of the nation than any other question that has occupied the attention of the American Congress for this year or any other year.

All I have to say is this, in conclusion: I am not going to argue the merits of this case. You can get the facts; they are before you on every hand. The Interstate Commerce Commission's books and reports, and their findings and investigations, have all developed the practices of the roads as they are conducted now. The fact that the roads have increased their tariffs about 25 per cent—all this is before you.

What we ask, gentlemen, and what we hope and what we believe

that you, as honest men representing your constituents—not the farmers who live in your districts, but every business man, every consumer, in your district interested in having fairness meted out to them—the poor citizen who buys his groceries is interested in a fair rate as well as the greatest shippers—what we believe that you will do is to fix proper legislation and establish it so that to a large degree transportation rates will be permanent and stable. Then you will encourage men to go out and endeavor to make their farms more productive, and grow still more of the products of the soil for the benefit of the American people, and to relieve the starving people abroad.

You can give great encouragement all along the line. I want to say that the man who owns his farm here near the seaboard, near where he can get to tide water to ship abroad, is entitled to his relative advantage in position. We of the Central West, we in Indiana—and I am sure my good brother here from Wisconsin will back me in this statement—do not want to take away from these men of Pennsylvania and these men of New York their advantages of location. All we ask is equity and fairness. We do not want the broad and rich and fertile plains of the Dakotas to take away the advantages in position of the farmer who lives in the Central West.

We are all entitled to our respective positions. We have bought our lands, and we have paid for them, and we have paid our taxes, and we have stood by this grand Republic in its wonderful progress and in its success all the way through, and now we want the Congress of the United States, the men of the Congress, and this committee, which is charged with the great responsibility of passing upon this most important measure, to stand by us and help to see that fairness, justice, and equity is measured out to all these large corporations, as well as to the citizens of this Republic.

I was going to conclude, but I will say one word more. For years the national grange has petitioned, has urged, and has asked this legislation. Last year I was here in the interest of the Cullom bill. That bill was a little more drastic than this is, but this bill covers the same ground, although not quite so forcibly. Year after year we have been asking this legislation. Now we insist, and we hope, and we are confident that you are going to give us this relief in the present Congress.

STATEMENT OF MR. F. H. MAGDEBURG.

Mr. MAGDEBURG. Mr. chairman, I represent here to-day the Millers' National Association of the United States, the Chamber of Commerce of Milwaukee, Wis., and the Merchants and Manufacturers' Association of Milwaukee, Wis.

The Millers' National Association of the United States is an organization which comprises a membership scattered throughout twenty States in this Union and having an aggregate daily output of about 100,000 barrels of flour, the Chamber of Commerce of Milwaukee comprises a membership of over 620 of the most prominent business men of Milwaukee, and the Merchants and Manufacturers' Association is an organization of about the same number, engaged mostly in mercantile and manufacturing lines and general trade.

The bill which is before you (H. R. 8337) is one the purpose of which is to amend the act to regulate commerce, which was passed in

1887, after very deliberate action, by the Congress of the United States, its passage being brought about by the then chaotic conditions of transportation rates existing during the years from 1880 to 1887. It then became evident that it was necessary to pass an act regulating interstate commerce and regulating the carrying corporations of the country. The discriminations then existing were ruinous to almost all lines of industry.

This act was not the result of a hasty conclusion, but Congress, through committees, informed itself of the necessity of such legislation. Hearings were had throughout the country and information gathered, and the outcome of all that information was the interstate-commerce act passed in 1887. It was the judgment of the gentlemen who passed that act that it covered the ground fairly and squarely, without injury to the railroads or to the carrying corporations of the country, and without injury to any of the shippers of the different localities interested.

The underlying principle of the act was, as I understand it, equality in the use of the transportation facilities of the country; no discrimination as against persons or places in any of the commercial commodities.

The act, as I understand it, has been fairly administered; the Commissioners who were appointed under its provisions were men of eminently fair disposition and fair reputation. There is not a single exception to be made, as far as I am informed on the subject. They were all able, capable men, selected irrespective of political affiliation.

The railways, or the carrying corporations of the country, submitted with grace to all the decisions made by that Commission for quite a period of years. While there were violations and discriminations going on, possibly, they were of an inconsequential nature, and were promptly adjusted upon complaint and the ruling of the Commission thereon, so that the act was fairly operative until 1897, when a decision of the Supreme Court of the United States put an end to the authority of the Commission's rulings and the placing of those rulings in force.

The proposition is a plain one, that if the Commission has not the power to enforce its rulings, it has practically no value.

No shipper, no receiver, no man in trade, and none with whom I am connected, seeks an unduly low rate. All we desire is an equitably adjusted rate for all concerned, and that rate to be paid without discrimination by all who ship the same commodity. No discrimination to be practiced as against localities. We have on several occasions come in vain to Congress for relief. Last year we commended to your consideration the Cullom bill, which, though it was reported, was never acted upon.

We now come to you again with this bill seeking relief, asking you to make the interstate-commerce act as operative as it was supposed to have been at its creation, and to endow the Commission with that power which the Supreme Court holds it does not possess under the present act. We think the enforcement of a ruling of the Commission after a hearing, its immediate enforcement until revoked by a court, will give us the relief sought for. The other matter, relating to the manner of how this is all to be done, is a question for lawyers, which I will not touch upon. But I find that the milling industry of this country has been seriously injured by the discriminations which have been

practiced between the raw material—wheat—and flour, the product of that material.

The result is self-evident, because the discriminative rates have built up the milling industry of Europe at the expense of the milling industry of this country.

An extract from a paper, which I have here, published in Dubuque, Iowa, refers to the matter briefly, and I will, with the permission of the chairman, file this with the committee as a part of my remarks.

The article referred to is as follows:

A MENACE TO THE MILLING INDUSTRY.

A writer in a recent issue of the Saturday Evening Post calls attention to the potent influence which the railroads of this country exercise over its industries. According to the Government reports, the exports of wheat in June of this year were in round numbers 13,000,000 bushels, which was 50 per cent more than for the same month last year. In July there were 18,000,000 bushels exported, nearly three times as much as in July, 1900. For the seven months ending with July the amount of wheat exported was over 95,000,000 bushels, or 45,000,000 bushels greater than in the first seven months of 1900. The first thought is likely to be that this is an excellent showing for this country, yet the contrary is the case. In fact, it is the poorest showing the country has ever made in the way of exports, for these enormous foreign shipments point to a commercial calamity which is sure to overtake a great industry—that of flour milling—unless it is averted by prompt action on the part of those who have it in their power.

The situation is so simple that anyone may see it. The milling capacity of this country has increased so rapidly in the last ten years that a foreign outlet for a part of the flour is an absolute necessity to keep the mills running. In fact the capacity of many of the mills has been increased by reason of the export business they have built up.

The Minneapolis mills exported for the crop years ending with August, 1899 and 1900, nearly one-third of their output, or about 5,000,000 barrels each year. However, for two years the export trade has steadily fallen away; first in loss of profit, though the volume of shipments was maintained. The mills kept their brands in the foreign market, although it was impossible to sell at a profit owing to the low prices made by the European millers. This year American millers have been unable to sell their flour in Europe except at a loss most of the time, and as a result the volume of flour exports has fallen off heavily.

The cause of this falling off of the flour export business is discrimination in freight rates whereby wheat, the raw material, may be shipped from the West to Europe at a lower rate of freight than flour, the manufactured product. The millers of Great Britain and of the Continent are thereby enabled to secure American wheat and to make flour which can be sold cheaper in London, say, than American-made flour can be sold. This discrimination in freight favoring wheat as against flour means, unless relief be given to the miller, practically the ruin of the great industry, and a return—a retrograde step—of this country from being a shipper of a manufactured article to becoming an exporter of raw material.

In August the published tariff on wheat and flour, all rail from Minneapolis to New York, was 22½ cents per hundredweight, but the actual rate obtainable on wheat was 16 cents. No reduction in rates was obtainable on flour. Adding to this heavy discrimination against flour the fact that the steamship companies made a rate of 1 cent a bushel on wheat from Boston and Philadelphia to London and Liverpool, but that flour paid from three to five times that rate, under the circumstances it is not surprising that the export flour trade has been paralyzed.

That the reader may fully comprehend the magnitude of the industrial tragedy that is in sight, the importance of the flour-milling industry must be understood. In round numbers the capital invested in milling plants is \$250,000,000, which is only exceeded by iron, steel, and foundry works, and cotton-goods factories.

Take away from these mills their export trade, and they must find an additional domestic market for their surplus or close down. The Minneapolis milling companies would be forced to sell 5,000,000 barrels of flour in American markets more than they have been doing or close their mills one-third of the time. The latter is impossible. Owing to their wealth and strength, they might be able to sell their entire output in the domestic market, but this means that much less flour sold by other mills. At the same time, there would also be other exporting mills endeavoring to

dispose of their surplus output in an already overstocked market. The final result would be the wiping out of all but a few small mills with a local trade, and a giant corporation or two that would control the trade of the cities.

The trouble may be traced to the big elevator companies of the West and Northwest. To illustrate—and this can not be successfully denied—an elevator manager at Kansas City, Omaha, Minneapolis, or Chicago has an accumulation of wheat which he wishes to get out of the country. He goes to the several traffic managers, saying, "I have a million bushels of wheat to move, and the road making the best rate gets the business." The traffic managers want the business, and one of them gets it.

Here is where this policy is shortsighted. A road may several times a year get a few million bushels of wheat to haul, and it can run solid trains to move it. Then the movement stops for a time and part of the road's equipment is idle, whereas it has been crowded and other traffic has been inconvenienced for a time. The elevator man has little further use for the road until he can get another cut rate. With the miller it is different. Every town of any size has a mill, in which a number of men are employed. Shipments of flour continue evenly and uninterruptedly throughout the year. Coal, cooperage stock, bags, and machinery are shipped in, and, in the aggregate, form an immense amount of business.

As wheat exporting countries Russia and Argentina are almost as important as the United States. As milling and manufacturing nations they are insignificant. Their grain goes from the producer to the exporter at a fraction of its worth, and the peasantry of those countries are as far below the American farmer as the handmills of our ancestors were below the roller mills of to-day. Yet let the manufacturer and all that comes with him step in between the peasants of those countries and the grain exporters, and the importance of those nations will steadily increase. Remove the manufacturer of flour in this country, and the other industries that go with him, from the place he occupies between the farmer and the exporter of wheat, giving the farmer over into the hands of the few large elevator companies and a milling corporation or two, and the great agricultural manufacturing States will crumble back to pastoral primitiveness, and the great flour milling industry and the hum of wheels in thousands of villages and towns will be a thing of the past.

The mills of this country, as must be known by you, have largely been engaged for some years in export trade, and all of them have increased their milling capacity as their export trade increased. Since the discrimination practiced between wheat and flour it has become apparent that the milling capacity is beyond our domestic wants, and the result of crowding all the capacity of our mills for the production of flour for consumption in this country alone has been ruinous to the trade. About four weeks ago an arrangement was arrived at with the railroads by which they gave us what they called an export rate on flour, which was based upon the export rate in force upon wheat.

We all felt that there was now a chance to do something, but that rate was hardly in existence before it was recalled and the old conditions that existed prior to the 17th of March again prevailed, wheat being exported at a lower tariff rate than flour.

Mr. FLETCHER. Will you please tell us about what is the relative difference between wheat and flour in the export rate?

Mr. MAGDEBURG. The rate which they made us was $2\frac{1}{2}$ cents per 100 pounds lower than the domestic rate, which was supposed to fairly equalize matters and to give us a chance to do some export business.

Mr. FLETCHER. Two and one-half cents a hundred pounds?

Mr. MAGDEBURG. Yes, sir; $2\frac{1}{2}$ cents a hundred on flour.

Mr. WANGER. What was the rate on wheat?

Mr. MAGDEBURG. The rate on wheat has been varying all the way from $2\frac{1}{2}$ cents to 6 cents per hundred. It has been at times absolutely suicidal to grind for the export market.

Mr. BACON. Two and one-half to 6 cents a hundred less than flour?

Mr. MAGDEBURG. Yes, sir; $2\frac{1}{2}$ cents to 6 cents a hundred pounds less than flour.

Now, gentlemen, it has been shown by Government statistics that

in 1900 the aggregate of flour exported was 96 per cent of the entire export of wheat and flour reduced to wheat, while in 1901 it had dropped from 96 per cent to 55 per cent, owing to the discrimination practiced. For 1899 the percentage was 86 per cent, so that in 1901 it was really 10 per cent more than the previous year, while the subsequent year it was 41 per cent less. As to why this is done I think the Industrial Commission, which has been appointed by Congress, has not been able to elicit from the railway interests any answer. It is inexplicable to me, and to many of the men in the trade, because the products of the farm will certainly go forward some time, and there is no reason why after it has reached somebody's elevator that particular grain that is in that elevator, even if it is a very large amount, should be rushed to market at a discriminative rate against flour.

It would go forward as wheat in its due course or it would be ground by the mills and would then go forward as flour in due course of time. As Mr. Jones stated, the by-products would remain here; they would be fed to the stock on the farm, the sheep or hogs and the cattle, and in this way would help to keep up the condition of the farm to a higher standard. We seek no relief from you at the expense of the carrying interests of the country. All we ask is that we be treated on a parity with everybody else. It seems to me self-evident that if I am milling in Milwaukee and am shipping my flour to the East or to Europe for sale—even if I am at a disadvantage of but 2½ cents per 100 pounds against my neighbor, who is perhaps better acquainted with the railroad man than I am—it is impossible for me to do business, because 5 cents on a barrel of flour is considered a good milling profit nowadays, and it would be useless for me to attempt to do business on such an inequality.

Therefore, in fairness and on correct business principles, it is necessary that all shippers stand alike with the railroads, and that no rebates or discriminations be made as against shippers or as against localities. This is all that we ask, and we do not think that asking this imposes any hardship to the railroads; none whatever. We are not asking for a particular tariff, we are not asking for a particular rate upon our flour; we are simply asking that the discriminations which have been practiced as against individual commodities and locations shall be discontinued by this bill being passed, giving the Commission more power, or giving it the power which it was supposed to have when the Commission was created. It seems to me, a layman, that the railroads should join hands with us, and insist that all should be treated alike.

I can see no reason why a railroad or a carrying corporation should favor A as against B, so long as A ships the same product and in the same quantity. There is no reason why a railway or a carrying corporation should favor one locality at the expense of and to the detriment of another. They should not. They are public highways and those public highways should be for the use and at the disposal upon equal terms of all who wish to use them, and we come to you for that relief which we think we are entitled to.

Mr. FLETCHER. Will you please tell us where these discriminations against localities come in; what are the localities which are discriminated against?

Mr. MAGDEBURG. I can not now name any particular locality, but at times wheat from beyond the Missouri River and Northwestern

points is carried through Chicago at a very much less percentage of rate than it is from Chicago or Milwaukee or Minneapolis. There are times when these discriminations take place. They are not always in vogue, but they are spasmodic, so to speak. When somebody has got a big lot to move, they want to move it, and they go to the freight agent and they say, "I have a lot of wheat to move," and they get a special rate. That does not benefit anybody only that particular individual, but it is hard on others who are not getting the same rate.

Mr. COOMBS. Let me ask you, Supposing you ship your flour to Europe, do you get any rebate because of the export shipments; is there any such thing as that coming to you as there is coming to the wheatman?

Mr. MAGDEBURG. I stated here a while ago that the railroads made an open rate which was $2\frac{1}{2}$ cents a hundred less on flour which was exported as against flour for domestic use.

Mr. COOMBS. I did not understand that.

Mr. MAGDEBURG. That rate went into effect on the 17th of March, but it had hardly gone into effect when it was rescinded. There was one condition attached to that, and that condition was that the minimum shipment should be 35,000 pounds, and that should be the minimum carload or the minimum contract made, while there was another stipulation which compelled the shipper to load the cars to their full capacity. That was an arrangement arrived at between the milling interests and the carriers of the country to go into effect on the 17th of March.

We all, as I stated, went to work and changed our codes. We notified our correspondents that after this no proposition would be entertained for any shipment under 35,000 pounds. We changed the codes and the quantities in the codes, and got them out all ready to go into operation. But hardly had this been done when this very arrangement which had been entered into by the milling industry of the country and the shippers was recalled, and the rate which will go into effect on Monday, the 14th of April, will be precisely the same rate on flour for export as for domestic purposes. The rate will be precisely the same, while between the 17th of March and the 14th of April the rate was $2\frac{1}{2}$ cents differential. It was not in the nature of a rebate or a remission or in the manner of an allowance in favor of one shipper against another, but it was an open, published rate.

Mr. FLETCHER. Have they changed the rate on export wheat to correspond with that change?

Mr. MAGDEBURG. No, sir; they have not.

Mr. FLETCHER. They simply went back to the old rate.

Mr. MAGDEBURG. Simply went back to the old rate. And this has disconcerted all of us and put us in a very awkward position. Now, we, as shippers, as I said before, can not see why it is going to be an injury to the railway interests of the country to insist that they shall treat all alike. We can not see why A should have a better rate than B, or why at times a locality should have an advantage over another locality. All we ask is fair treatment, and then if competition wipes out a mill or another industry here and there that must be ascribed to other causes than the question of transportation.

We are willing as a people and as producers to take our chances; but none of us are able to cope with one who is favored in the matter of freight rates, and I fully coincide with Mr. Jones, who preceded

me, in the proposition that there has been nothing that has tended to build up in this country what is popularly called the "trust" more than this discrimination between individuals and places. If I have an equal rate with my neighbor I am not afraid of him. I can mill just as well as he can if I have got the wheat, and if I have the money and can get the wheat, and in open competition I am willing to take my chances, and if I am not as smart as my neighbor, I am willing to lay down and quit. But I can not cope with him if he has an advantage in freights of 5 cents a barrel, or even more, over me, because 5 cents a barrel is absolutely the profit to-day.

All we ask is for you to put the interstate-commerce law back where it was supposed to be before the Supreme Court of the United States riddled it, and put holes in it like a sieve. There is no use in that law if it can not be enforced. We have found out that it is impracticable to have open competition between the railroads. I do not think they want it themselves. I do not think they want the chaotic conditions that existed in the eighties back again. I think there were more railroads in the hands of receivers then than there have been since the passage of the interstate-commerce act. All that we want is for this Congress to give us that relief which we are entitled to as law-abiding and taxpaying citizens of this country.

We ask you to put the law back where it was supposed to be in 1887, and then let the railroads, if they find that it is not complete, exercise their ingenuity to help perfect it—instead of tearing it down, as they have been doing for the last ten years. I can not understand why the railway corporations, who hire the best counsel in the country, when they found that there was a defect—as they claim there is a defect—in the interstate-commerce act, should not have exercised that great ingenuity and ability which they had at their command to perfect that act, which certainly was a beneficial one to them just as much as it was to the industries of the country; why they did not go to work and say to the Interstate Commerce Commission, "Here, gentlemen, we point out the defect, and we will go hand in hand with you before the Congress of the United States and ask it to put this right, as it should be, so that another railroad, or one which is willing and anxious to break the law, shall not be able to break the law."

It looks to me as though that would have been much more honest than what they have been doing for the past ten years. They have been lawbreakers all the way through, from beginning to end. They have not helped to sustain the law; they have helped to tear it down, and they have been lawbreakers ever since that law has been put in force, instead of putting their shoulders to the wheel and perfecting it, as they should have done as good and law-abiding citizens. I am not decrying the railroads, mind you. I think that there is no one I represent here to-day who wishes any wrong to be done to them; no one whom I represent asks that they be harmed. But we do insist that they shall be compelled to do right by all shippers and by the producers of the country. We feel that we are entitled to redress from this Congress.

We feel that the carrying corporations are amenable to the laws that have given them their corporate existence, and while, perhaps, there are no carriers which have their corporate existence from the Congress of the United States, as soon as they get into interstate commerce they are amenable to the Congress of the United States, just as

much as any other corporation that does any interstate business, and being amenable to the Congress of the United States, the Congress of the United States, I claim, has the right, and not only the right but it has the duty, to see to it that the transportation and carrying companies of the country are held to a strict enforcement of the letter and spirit of the law as it exists, and if that law is not sufficient as it has been interpreted by the Supreme Court of the United States, then it is the duty of Congress to make that law so that equal justice shall be meted out to all shippers and communities.

Gentlemen, I am very much obliged to you for your kind consideration and your attention. Now, if there are any questions that you wish to propound to me I will, if possible, answer them to your satisfaction.

Mr. COOMBS. I would like to ask you if discriminations in favor of exporting wheat enable the European millers to compete with the American millers?

Mr. MAGDEBURG. In what respect; in buying wheat?

Mr. COOMBS. No; they buy the wheat—

Mr. MAGDEBURG. They buy the wheat here.

Mr. COOMBS. Then can they export their flour to this country and compete with the American miller?

Mr. MAGDEBURG. No, sir.

Mr. COOMBS. Not flour?

Mr. MAGDEBURG. No, sir; they can not.

Mr. COOMBS. It does not operate?

Mr. MAGDEBURG. It does not operate backward. It operates bad enough the other way.

Mr. COOMBS. Yes; I understand that proposition. They compete with you in the European markets?

Mr. MAGDEBURG. Yes, sir; and they wipe us out absolutely. There are lots of us who are hanging on by the teeth thinking that Congress will do something for us. We do not want our brands to be extinguished over there, and we have been hanging on looking for and hoping that some change would come, and we did feel that it had come on the 17th of March.

Mr. COOMBS. I was wondering if they could compete with you over here.

Mr. MAGDEBURG. No, sir; they could not bring the flour back here and compete in our American markets with the American miller.

Mr. COOMBS. There is not any such thing as competition in the American market with the American miller?

Mr. MAGDEBURG. No, sir; there is not. There is enough of that now among ourselves without calling in any other fellows. But it has been a very detrimental business from the fact that our competitors in Europe have crowded us out of the English markets. Wheat has been exported to France, for instance, and there manufactured into flour, they of course paying the duty as it goes into France on the wheat, but immediately receiving back that duty when they show that they export a certain amount of flour, and with our own wheat these French millers have competed with us as against the flour made out of the same wheat in this country, in the London markets particularly, and in the Irish markets, as against our American flour, and we have not been able to cope with them.

Of course you must understand that the by-products of wheat are

worth, to start with, much more money in Europe than they are here for feeding purposes. And wheat going in such quantities as it has in the past year has absolutely made it impossible for us to compete, and it has compelled some of the mills to ship the by-products back into the country at a disadvantage in order that the farmers living back in the country might have their necessities met. For example, from Milwaukee we have been shipping by-products as far as 100 and 150 miles into the country backward, for the sake of furnishing the farmers with food for their cows or their other stock, which should not be. The local interests, the local mills, should furnish that.

The CHAIRMAN. A few days ago, in a committee hearing, some gentleman representing the millers insisted that the successful competition of the French miller with the American miller in the London market was due to certain dock charges in the port of London.

Mr. MAGDEBURG. I think I was here at that hearing.

The CHAIRMAN. Yes, sir. At that time he stated that the inability of the American miller to meet the French competition was caused by the onerous dock charges against the American shipper in that port which the French shipper was not subjected to.

Mr. MAGDEBURG. I brought that question up myself, I believe, Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. MAGDEBURG. That is an additional burden. That is an additional burden to the burden that I have already spoken of. It is not only the discrimination favoring wheat that is at fault, but there is the discriminative charge that is levied upon the flour coming direct from our ports or from our mills as against the French millers' flour that comes from Marseille or Havre. That is an additional charge upon the flour that is made against the American miller of 1s. 9d. per ton, which the French miller does not have to pay when he delivers flour in London. It is an additional hardship and burden that is placed upon us aside from the difference in the rates on wheat and flour.

The CHAIRMAN. Some gentleman during that investigation, representing the millers, made the statement that if that 1s. 9d. charge was abrogated, the American miller then could successfully compete with his French rival in that market.

Mr. MAGDEBURG. I presume that he made that statement upon the supposition that, all things being equal, the wheat and flour rate being the same, he would be able to do that; but with the differential between the wheat and flour rate we are absolutely unable to do so, because the difference is too great.

Mr. FLETCHER. This London dock charge is an additional burden?

Mr. MAGDEBURG. An additional burden to the difference in rates between wheat and flour.

Mr. JONES. Practically this bill would have no effect on that?

Mr. MAGDEBURG. No; but that, Mr. Chairman, related to the hearing on the London dock charge, and I think I was the man that brought that very question up, if I remember correctly.

The CHAIRMAN. Two or three gentlemen spoke about it.

Mr. MAGDEBURG. And then afterwards, I believe, one of the steamship gentlemen pooh-poohed the idea, claiming that the rate to Marseille and Havre was quite different from the rate to London, and in that way tried to explain the matter away, but I stated in my statement that all things being equal—

The CHAIRMAN. One or more of those gentlemen, you will remember, said that there was no French flour in the London market.

Mr. MAGDEBURG. In the London market?

The CHAIRMAN. That there was no French flour in the London market.

Mr. MAGDEBURG. Then he was talking about something that he did not know anything about, because I know that a great deal of French flour goes into the United Kingdom markets, not only London alone, but all the United Kingdom markets, and while I do not say that he intentionally stated anything wrong, I do say that is not the fact. The fact is that a great deal of flour that is manufactured in France out of American wheat, particularly out of the Kansas variety, goes into the United Kingdom in all the ports, and particularly into London. My own correspondents called my attention to it at one time, that they preferred to buy American flour coming from France, because they were always sure to get it on a certain day, while we are not in the position to deliver it with that promptness.

If we sell a man to-day 500 sacks of flour, it is quite problematic when that flour will reach the buyer. Sometimes it gets to the seaboard in ten days, and then it may lie at the seaboard for fifteen days or thirty days or forty days or even sixty days. I have known of flour lying there for three months. So that the buyer has no benefit of it; so that if a man in London to-day buys from Marseille or Havre he stipulates that the flour shall leave Marseille, for instance, on a certain day.

Mr. COOMBS. That is a natural advantage.

Mr. MAGDEBURG. Yes; a natural advantage.

Mr. COOMBS. It can not be overcome.

Mr. MAGDEBURG. No, sir.

STATEMENT OF MR. FRANK BARRY.

Mr. BARRY. Mr. Chairman, I have here a brief submitted by the representatives of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers, which they ask that the committee shall receive and consider. It is pertinent to this question.

The CHAIRMAN. Hand it to the stenographer and it will be inserted in the hearings.

(Thereupon, at 11.55 a. m., the committee adjourned until Monday, April 14, 1902, at 10.30 o'clock a. m.)

The INTERSTATE COMMERCE COMMITTEE, Washington, D. C.:

The undersigned, representatives of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers, having been assured that their views in writing in reference to the needed legislation in the interest of interstate commerce would be considered, beg leave to submit the following:

The interstate-commerce law enacted by Congress in 1887 was the outcome of constant public demand for at least ten years. The conditions existing at that time, and which gave rise to this demand, confront the public to-day in more aggravated form. President Arthur, in his message of December 4, 1882, recommends to Congress the regulation of interstate commerce, arraigns the corporations which own or control the railroads of adopting such measures as tend to impair the advantages of healthful competition and to make hurtful discriminations in the adjustment of freights. He points out the fact that these inequalities have been corrected in

several of the States by appropriate legislation, but so far as such mischiefs affect commerce between the States they are subjects of national concern, and Congress alone can afford relief.

In his message in December, 1883, he points out the relations that ought to exist between the public carriers and their patrons, and lays upon Congress the responsibility of granting relief and protection to the general public in the following language:

"While we can not fail to recognize the importance of the vast railway system of the country and their great and beneficent influences upon the development of our material wealth, we should, on the other hand, remember that no individual and no corporation ought to be invested with absolute power over the interest of any other citizen or class of citizens. The right of these railway corporations to a fair and profitable return upon their investments and to reasonable freedom in their regulations must be recognized; but it seems only just that, so far as its constitutional authority will permit, Congress should protect the people at large in their interstate traffic against acts of injustice which the State governments are powerless to prevent."

I desire to draw your attention to the time when these messages were delivered—this was prior to the birth of Populism; also to the fact that they come from a Republican President of the United States, who gives authoritative expression of existing facts and of a universal demand for needed legislation. The charge has been made that this demand for the amendment of the interstate-commerce law is Populistic in its origin and character. It is no more Populistic than the origin of the law, and no law has ever been placed on our statute books which gave greater satisfaction to the general manufacturing and commercial public.

The necessity of this law is made apparent by the study of the number and the variety of cases tried and decided by the Commission before its authority was questioned and denied by the courts.

In his message of December, 1896, President Cleveland says: "The justice and equity of the principles embodied in the existing (interstate-commerce) law, passed for the purpose of regulating transportation charges, are everywhere conceded, and there appears to be no question that the policy thus entered upon has a permanent place in our legislation." He states further that the wholesome effects of this law are manifest and have amply justified its enactment, and expresses the hope "that the recommendations of the Commission upon this subject will be promptly and favorably considered by Congress." Instead of Congress heeding the advice of the nation's Chief Executive, and the nation's spokesman, and carrying out the nation's wishes in this matter, the Supreme Court acted in 1897 and most effectually deprived the Commission of the power necessary to enforce its findings. The immediate result of this decision was the inauguration of a period of extortionate rates, rank discrimination, and a general hold-up of a forbearing but a determined and outraged public.

President Roosevelt, voicing the sentiment of the general public, again calls the attention of Congress to the need of legislation along this line. He states "that the cardinal provisions of the interstate-commerce act were that railway rates should be just and reasonable and that all shippers, localities, and commodities should be accorded equal treatment;" that "experience has shown the wisdom of its purposes, but has also shown, possibly, that some of its requirements are wrong, certainly that the means devised for the enforcement of its provisions are defective." He concludes by saying that "the act should be amended. The railway is a public servant. Its rates should be just to and open to all shippers alike. The Government should see to it that within its jurisdiction this is so, and should provide a speedy, inexpensive, and effective remedy to that end. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies. The subject is one of great importance and calls for the earnest attention of Congress."

The observation of these three Presidents covers a period of twenty years. They agree that an adequate interstate-commerce law is a necessity, that it is indispensable to the administration of justice, and that the responsibility for the enactment of such a law rests with Congress. For twenty years and more the general public has demanded this law. In 1887 the Commission was created, as was then supposed, with power to stop and correct abuses. In 1897 the Supreme Court held that their powers were purely advisory. Since then the Commission is practically powerless. It is perhaps a little better than no Commission, but so far as granting practical relief is concerned the country would be just as well off without any Commission. It is contended by representatives of the railways that the granting of power to the Commission to substitute a just for an unjust rate or an equitable for a discriminative rate is equivalent to depriving the roads from the management of their property and investing the Commission with power to make rates. This was not the intention of

the law of 1887, nor the practice of the Commission under that law; neither is it the wish of the business men of to-day. What we contend for is a law which will give the Commission power, after a full, fair, and impartial hearing of both parties in interest, to put into effect a just and equitable rate, and this rate to be observed by the roads in question until the decision of the Commission is reversed by the Federal courts.

The prosperity of the railways depends on the traffic given them by the public, just as the success of a bank depends on the deposits and business of its patrons. There is no public institution in the land which is administered more autocratically than our national banks by the Comptroller of the Currency. Yet the only bankers that kick against this supervision are those who are determined to do an illegitimate business. The same is true of railroads. Honest railroad men have nothing to fear. They know that the public does not want to rob them, and that the law as it now stands affords them ample protection. They also know that it is the inalienable right of their patrons to be protected by law against the unjust methods of unscrupulous railroad managers.

The lumbermen of Kansas and Oklahoma, and the wholesalers shipping to these points, have had special experiences with the railroads on the question of lumber rates. The lumber rates to Kansas and to Oklahoma have not only been arbitrarily high, but have been in direct violation of the interstate-commerce law, which provides that a greater charge shall not be made for a short haul than for a long haul under similar conditions. It is a general rule in both passenger and freight traffic that the company having the shortest and most direct route dictates the rate. This is one of the reasons offered by the railroads why Missouri, Illinois, and Indiana and other States have a much lower average rate on lumber than Kansas and Oklahoma, although the distance from the center of production in the Southern forests to the center of consumption is much shorter, and in many instances the lumber passes through Oklahoma and Kansas to reach these more distant points. The argument advanced has been that some railroad having a direct route to some point in the lumber district makes the rate for all roads to these centers. We do not object to this rule but we do object to railroads using one method of procedure or one law to make rates to one State and another law to make rates to another State.

The rates from the central points of production to the central points of consumption in the various States are as follows:

| State or Territory. | Average distance. | Average rate. |
|---------------------|-------------------|---------------|
| | Miles. | Cents. |
| Oklahoma | 350 | 29½ |
| Kansas | 600 | 29 |
| Missouri | 600 | 23 |
| Illinois | 1,000 | 24 |
| Indiana | 1,300 | 25½ |
| Ohio | 1,600 | 28 |

This discrimination in rates greatly retards building in this Territory; it deprives us of all the natural advantages of location in close proximity to the Southern forests. This Territory has to pay an excessively high rate to enable the roads to give an extremely low rate to more remote points, in order to get into the Territory of roads hauling lumber from Northern forests.

The Kansas rate, established more than fifteen years ago, was made via Kansas City. The rate established then to the central Kansas points was 27½ cents per 100 pounds. This rate was made to conform to the existing white-pine rate from the North. Since then white pine has gone out of use, and yellow pine is used almost wholly; in addition diagonal roads were built, running south through Kansas and Oklahoma direct to the forests of Texas, Arkansas, and Louisiana, shortening the distance of the lumber haul 200 miles or more. The route for carrying the southern lumber product has been changed; the lumber comes no longer by way of Kansas City, and yet these old Kansas City rates are steadily maintained. Kansas City lies 40 miles north of the center of the State, and the opening of the diagonal roads to the south has moved the center of lumber production 80 miles west. This new condition saves to the center of Kansas consumption a haul of over 200 miles, or about 33 per cent of the entire distance. This shortened haul entitles us to a proportionate reduction in rates. But instead of reducing rates, in December, 1899, the roads advanced the rate 10 per cent to this territory, on the plea that they were entitled to share in the general prosperity of the country. Through the efforts of the attorney-general of the State and the political situation in reference to State railroad legisla-

tion, we succeeded in getting the advance changed from 2½ cents to 1 cent per 100 pounds. But still there was an advance instead of a reduction.

Another reason why lumber rates should be less than local rates per ton per mile—and unfortunately they are higher in the State of Kansas and the Territory of Oklahoma—lies in the fact that the kind of service required to haul lumber is less expensive than that required for most other commodities. The roads can use a cattle car, a box car, a flat car, or any other kind of car that may be to them convenient; the lumber is moved whenever it suits the road, without any loss to them except their own delay; the cost of loading and unloading is borne by the consignor and consignee; the payment of freight is in large amounts and is always cash; the risk is the minimum as compared with the hauling of other commodities, such as live stock, grain, and other commodities even more perishable; no suits confront the roads in the adjustment of losses; besides, the distribution of the Southern lumber trade extends over the entire year and over the entire territory traversed north and south. The Southern lumbermen are not dependent on winter snows for logging purposes; their stocks are always full, unless depleted through the channels of trade.

The territory intervening between Kansas and the Southern forests is rich in natural resources. Every foot of it affords a large amount of traffic in both directions. These considerations ought to be strong factors in determining the rates on lumber. But I shall give you a practical idea of the existing conditions. Let us suppose a train load of lumber originates at Conroe, Tex., on the Atchison, Topeka and Santa Fe Railroad, and let us suppose that this lumber is distributed along its line to Chicago, the distances and rates will be as follows:

| | Distance. | Rate per 100 pounds. |
|------------------------|---------------|----------------------------|
| | <i>Miles.</i> | <i>Cents.</i> |
| Gainesville, Tex. | 342 | 18½ |
| Ardmore, Okla. | 382 | 25 |
| Purcell, Okla. | 449 | 26½ |
| Guthrie, Okla. | 513 | 28½ |
| Wichita, Kans. | 653 | 28½ |
| Topeka, Kans. | 815 | 26 |
| Lawrence, Kans. | 842 | 24 |
| Kansas City, Mo. | 882 | 23 |
| Chicago, Ill. | 1,340 | 24 |

And all points between Carrollton, Mo., and Chicago on this line get a 24-cent rate. You will notice that the rate from Gainesville, Tex., to Ardmore, Okla., jumps up 6½ cents per 100 pounds in a distance of 40 miles, or 30½ mills per ton per mile, whereas the through rate to Chicago is 3.6 mills per ton per mile. The rate increases in inverse ratio to the distance the lumber is carried. This is not an isolated case, but this is a fair sample of the lumber rates adopted by all the roads operating in the State of Kansas and in Oklahoma.

Texas originates lumber within its own State, and has a stringent State railroad law. This accounts for the advance in freight as soon as the road strikes Oklahoma, and also emphasizes the necessity of an interstate railroad law. The distance from Conroe to Chicago is more than twice the distance from Conroe to Wichita, and yet the rate to Chicago is 24 cents, while the rate to Wichita, over the same road, under precisely similar conditions, is 28½ cents per 100 pounds.

Under the existing interstate commerce law the Commission is powerless. We employed the best legal talent obtainable and were advised by them that the Commission can only advise and intercede with the railroads to do the right thing by its patrons, but has no power to enforce its findings; they can not inaugurate a fair and reasonable rate, neither can we obtain redress in any court of the land except in so far that we can bring suit for recovery in individual cases where the roads have made excessive and unreasonable charges. But to prosecute a suit of this nature takes years under our present system, while in the meantime the excessive charges are carried on by the roads.

With these facts and conditions confronting us and affecting all lines of trade throughout the nation and presented constantly and persistently by the Presidents of the United States to Congress for the last twenty years for favorable action, it seems unnecessary for business men to plead with Congress to do what seems to them their plain duty. The men who are pleading with you to place on our statutes (Federal) such a law as is suggested in President Roosevelt's message are not wild-eyed Populists; they are men who own and represent capital; they are men who by brain and brawn develop the varied industries of the nation; they are men who produce the

business which makes the railroads a public necessity and a paying investment, men who understand the laws of business, men who realize the cost and appreciate good railroad service and are willing to pay for it.

We desire to draw your attention to the fact that the owners and operators of our great public railroads are men subject to like passions as other men. The fact is that the men at the heads of the various departments are able men, in the prime of life, who have an ambition to make a financial record for their respective departments. To gain their ambition they very often resort to means which are neither just nor legal, and we look to you, the only body of men in the nation who have power to give protection, to pass a law which makes justice available and easy and speedy to the humblest citizen of our land. We know that the interests of the railroads do not weigh heavier with you than the interests of the public, and that you will not by inaction make it possible for unscrupulous railroad men to rob an unprotected public.

I know that facetious and misleading arguments are made by the representatives of the railroads, claiming that this legislation would place the rate-making power in the hands of five inexperienced men, and would deprive them of the management of their business. We do not ask for any such a law; we would ask you to pass a law which while it protects the public also protects the railroads. Any other law would be unconstitutional. The proposed Nelson bill gives ample protection to both parties in interest, and does not deprive the railroads any more of the management of business than the rulings of the Comptroller of the Currency deprives national banks of the management of their business, or the rulings of the Treasury Department in administering the revenue deprives importers or merchants of the management of their business. These departments see that these lines of business are conducted in a lawful and legitimate way, and the only parties that suffer are those who are guilty of fraudulent methods. The railroads are amply protected in this measure against any mistake made by the Commission, intentionally or otherwise, and can get speedy action in any of the Federal courts.

In conclusion we desire to state that we come not to ask a favor, but simple justice. We do not desire to arraign class against class. We ask you as our representatives and lawmakers to place upon our statute book a law which will prevent this. If, in your judgment, the general public is to be left to the mercy of conscienceless railroad magnates, either repeal the interstate commerce law or let it stand in its present worthless form. Their practices of extortion and discrimination turn good and able citizens into anarchists. "Patriotism lives and grows on what it feeds upon." Create or tolerate a condition which deprives A of an equal chance with B, which will build up one man by pulling down another, or build up one city, community, or State by tearing down another, and let this condition continue for years against the protest of the greatest and most responsible men of the nation, including our Presidents, and you will create a condition of distrust, dissatisfaction, disaster, and political disaffection.

All of which is respectfully submitted.

E. M. ADAMS,
E. S. MINER,
E. R. BURKHOLDER,
Committee.

(Dictated by E. R. Burkholder, Hillsboro, Kans.)
APRIL 5, 1902.

POWER OF CONGRESS OVER INTERSTATE COMMERCE.

Congress has power to constitute tribunals inferior to the Supreme Court. (Cons. U. S., section 8, clause 9.)

To regulate commerce with foreign nations and among the several States and with the Indian tribes. (Cons. U. S., section 8, clause 3, Article I.)

The making and fixing of rates is a legislative, and not a judicial, function; and the decisions are uniform in declaring that statutes creating railroad commissions, and giving them the power to make and fix rates, are not unconstitutional as delegating a legislative power which belongs only to the legislature itself. (8 Am. and Eng. Ency. of Law, 911; *Chicago & N. W. R. Co. v. Dey*, 4 Ry. & Corp. L. J., 465; 35 Fed. Rep., 866; 2 Inters. Com. Rep., 325; 1 L. R. A., 744. *Granger Cases*, 94 U. S., 113-187; 24 L. ed., 77-97. *State ex rel. Railroad & Warehouse Commission v. Chicago, M. & St. P. R. Co.*, 38 Minn., 281; 37 N. W., 782. *State ex rel. Board of Transportation v. Fremont, E. & M. Valley R. Co.*, 22 Neb., 313; 35 N. W., 118; 23 Neb., 117.)

36 N. W., 308. *Tilley v. Savannah, F. & W. R. Co.*, 5 Fed. Rep., 641. *Georgia R. Co. v. Smith*, 70 Ga., 694. *New York & N. E. R. Co. v. Bristol*, 151 U. S., 556; 38 L. ed., 269. *Reagan v. Farmers' Loan & T. Co.*, 154 U. S., 362; 38 L. ed., 1014; 4 Inters. Com. Rep., 560, and cases quoted. *Ames v. Union P. R. Co.*, 64 Fed. Rep., 165; 4 Inters. Com. Rep., 835. *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479; 42 L. ed., 243. *Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940. *Smyth v. Ames*, 169 U. S., 466; 42 L. ed., 819.)

When the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others. (*Johnson v. Towsley*, 13 Wall, 72; 20 L. ed. 485.)

The legislature's determination, either directly or indirectly, of what is reasonable, is conclusive, subject only to charter rights and to the fact that the rates established will give some compensation to the carrier. (*Atty. Gen. v. Old Colony R. Co.*, 160 Mass., 62; 22 L. R. A., 112. *Chicago & N. W. R. Co. v. Dey*, 35 Fed. Rep., 866; 2 Inters. Com. Rep., 325; 1 L. R. A., 744.)

The power to regulate is to prescribe the rule by which the commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. If, as has already been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States. (*Gibbons v. Ogden*, 9 Wheat., 1, 197; 6 L. ed., 23, 70.)

It is obvious that the Government, in regulating commerce with foreign nations and among the States, may use means that may also be employed by a State in the exercise of its acknowledged powers—that, for example, of regulating commerce within a State. (*Gibbons v. Ogden*, 9 Wheat., 204; 6 L. ed., 72.)

The power to regulate commerce * * * amounts to nothing more than a power to limit and restrain it at pleasure. (*Gibbons v. Ogden*, 9 Wheat., 227; 6 L. ed., 77.)

It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which induced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce arising among the States. (*Brown v. Maryland*, 12 Wheat., 446; 6 L. ed., 688.)

The power to regulate commerce includes that of punishing all offenses against commerce. (*United States v. Coombs*, 12 Pet., 72; 9 L. ed., 1004.)

The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality amongst the several States as to commercial rights, and to prevent unjust and invidious distinctions which local jealousies or local and partial interests might be disposed to introduce and maintain. (*Veazie v. Moor*, 14 How., 574; 14 L. ed., 547.)

Commerce is a term of the largest import. * * * The power to regulate it embraces all the instruments by which such commerce may be conducted. (*Welton v. Missouri*, 91 U. S., 280; 23 L. ed., 349.)

The power conferred upon Congress to regulate commerce with foreign nations and among the several States is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the new developments of time and of circumstances. It was intended for the government of the business to which it relates at all times and under all circumstances; and it is not only the right, but the duty, of Congress to take care that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation. (*Pensacola Teleg. Co. v. Western U. Teleg. Co.*, 96 U. S., 9; 24 L. ed., 710.)

The power to regulate that commerce, * * * vested in Congress, is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted. * * * The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. (*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 203; 29 L. ed., 161; 1 Inters. Com. Rep., 382.)

When a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. (*The Daniel Ball*, 10 Wall., 565; sub nom. *The Daniel Ball v. The United States*, 19 L. ed., 1002.)

But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. (*Coe v. Errol*, 118 U. S., 517; 29 L. ed., 715.)

This species of legislation is one which must be, if established at all, of a general and national character. (*Wabash, St. L. & P. R. Co. v. Illinois*, 118 U. S., 577; 30 L. ed., 251.)

For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. (*Mobile County v. Kimball*, 102 U. S., 691; 26 L. ed., 238.)

The power to regulate commerce embraces a vast field, containing not only many but exceedingly various subjects quite unlike in their nature. (*Cooley v. Philadelphia Port Wardens*, 12 How., 299; 13 L. ed., 996.)

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. (*Brown v. Houston*, 114 U. S., 622; 29 L. ed., 257.)

The uses of railroad corporations are public, and therefore they are subject to legislative control in all respects necessary to protect the public against danger, injustice, and oppression. (*New York & N. E. R. Co. v. Bristol*, 151 U. S., 556; 38 L. ed., 269.)

Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several States is to be governed, and may, in its discretion, employ any appropriate means, not forbidden by the Constitution, to carry into effect and accomplish the objects of a power given to it by the Constitution. (*Interstate Commerce Commission v. Brimson*, 154 U. S., 447; 38 L. ed., 1047; 4 Inters. Com. Rep., 545.)

The making and fixing of rates by either a legislature directly or by a commission do not work a deprivation of property without due process of law. (*Munn v. Illinois*, 94 U. S., 113; 24 L. ed., 77. *Davidson v. New Orleans*, 96 U. S., 97; 24 L. ed., 616. *Stone v. Farmers' Loan & T. Co.*, 116 U. S., 307; 29 L. ed., 636. *Dow v. Beidelman*, 125 U. S., 680; 31 L. ed., 841; 2 Inters. Com. Rep., 56. *Minneapolis & St. L. R. Co. v. Beckwith*, 129 U. S., 26; 32 L. ed., 585, and cases cited. *Budd v. New York*, 143 U. S., 517; 36 L. ed., 247; 4 Inters. Com. Rep., 45. *New York & N. E. R. Co. v. Bristol*, 151 U. S., 556; 38 L. ed., 269. *Reagan v. Farmers' Loan & T. Co.*, 154 U. S., 362; 38 L. ed., 1014; 4 Inters. Com. Rep., 560.)

The State does not lose the right to fix the price because an individual voluntarily undertakes to do the (public) work. (*Budd v. New York*, 143 U. S., 517; 36 L. ed., 247; 4 Inters. Com. Rep., 45.)

The Nebraska statute fixing maximum rates is not obnoxious to the fourteenth amendment. (*Ames v. Union P. R. Co.*, 64 Fed. Rep., 165; 4 Inters. Com. Rep., 835.)

The compelling of railway companies to comply with the order of railroad commissioners regulating rates is due process of law. (8 Am. & Eng. Enc. of Law, 911. *Chicago, M. & St. P. R. Co. v. Becker*, 32 Fed. Rep., 849. *Louisville & N. R. Co. v. Railroad Commission*, 19 Fed. Rep., 679; 16 Am. & Eng. R. Cas., 1. *Railroad Comrs. v. Oregon R. & Nav. Co.*, 17 Or., 65; 2 L. R. A., 195; 35 Am. & Eng. R. Cas., 542. *State ex rel. Railroad & Warehouse Commission v. Chicago, M. & St. P. R. Co.*, 38 Minn., 281; 37 N. W., 782. *Stone v. Natchez, J. & C. R. Co.*, 62 Miss., 646. *Stone v. Farmers' Loan & T. Co.*, 116 U. S., 307; 29 L. ed., 636. *State ex rel. Board of Transportation v. Fremont, E. & M. Valley R. Co.*, 22 Neb., 313; 32 Am. & Eng. R. Cas., 426. *People v. New York, L. E. & W. R. Co.*, 104 N. Y., 58. *State v. New Haven & N. Ry. Co.*, 37 Conn., 153.)

The principal objects of the interstate-commerce act were to secure just and reasonable charges for transportation. * * * (*Interstate Commerce Commission v. Baltimore & O. R. Co.*, 145 U. S., 263; 36 L. ed., 699; 4 Inters. Com. Rep., 92.)

It is difficult to perceive how the power to fix and regulate the charges for such transportation can be considered in any other light than that of a power to regulate commerce. (*Illinois C. R. Co. v. Stone*, 20 Fed. Rep., 468.)

It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish, and to descend to the most minute directions if it shall be deemed advisable. (*Cooley, Const. Lim.*, 732, quoted with approval by Mr. Justice Field in the case of *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196; 29 L. ed., 158; 1 Inters. Com. Rep., 382.)

That this power to regulate by fixing charges for interstate transportation is vested solely in Congress by Article I, section 8, paragraph 3, of the Constitution of the United States, is, in my opinion, equally well settled by numerous decisions of the Supreme Court of the United States. (*Mobile & O. R. Co. v. Sessions*, 28 Fed. Rep., 592.)

Several of the State statutes, under State constitutions, containing nearly identical

provisions on the subject as the Federal Constitution, allowing State railroad commissions to make and fix railway rates for such States, which said rates were to be operative until set aside by the courts, have been upheld as valid and constitutional by the United States Supreme Court. (See *Pensacola & A. R. Co. v. State* (Fla.), 3 L. R. A., 661, with extensive notes to that case and notes to *Winchester & L. Turnp. Road Co. v. Croxton* (Ky.), 33 L. R. A., 177.)

This Federal Commission has assigned to it the duties and performs for the United States in respect to that interstate commerce committed by the Constitution to the exclusive care and jurisdiction of Congress the same functions which State commissioners exercise in respect to local or purely internal commerce over which the State appointing them have exclusive control. Their validity in their respective spheres of operation stands upon the same footing. The validity of State commissions invested with powers as ample and large as those conferred upon the Federal Commission has not been successfully questioned when limited to that local or internal commerce over which the States have exclusive jurisdiction; and no valid reason is seen for doubting or questioning the authority of Congress, under its sovereign and exclusive power to regulate commerce among the several States, to create like commissions for the purpose of supervising, investigating, and reporting upon matters or complaints connected with or growing out of interstate commerce. What one sovereign may do in respect to matters within its exclusive control the other may certainly do in respect to matters over which it has exclusive authority. (*Kentucky & I. Bridge Co. v. Louisville & N. R. Co.*, 37 Fed. Rep., 567; 2 Inters. Com. Rep., 380; 2 L. R. A., 289.)

The power granted to Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit only of one uniform system or plan of regulation throughout the country. * * * In the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation and not to a multitude of systems. (*Robbins v. Shelby County Taxing Dist.*, 120 U. S., 489; 30 L. ed., 694; 1 Inters. Com. Rep., 45. *Stoutenburgh v. Hennick*, 129 U. S., 141; 32 L. ed., 637.)

Congress may, under certain conditions, reduce the rates of fare on the Union Pacific Railroad, if unreasonable, and fix and establish the same by law. (12 Stat. L., 497, chap. 120, sec. 18.) This statute is discussed by Mr. Justice Brewer in *Ames v. Union P. R. Co.*, 64 Fed. Rep., 165; 4 Inters. Com. Rep., 835, and held not to conclude the State of Nebraska from fixing rates until Congress takes action.

This act (of Colorado) was intended to apply to intrastate traffic the same wholesome rules and regulations which Congress two years thereafter applied to commerce between the States. (*Union P. R. Co. v. Goodridge*, 149 U. S., 680; 37 L. ed., 896.)

The Interstate Commerce Commission is an administrative board, and the courts are only to be resorted to when the Commission prefers to enforce the provisions of the statute by a direct proceeding in the court, or when the orders of the Commission have been disregarded. (*Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 162 U. S., 184; 40 L. ed., 935; 5 Inters. Com. Rep., 391.)

The entire commerce of the United States, foreign and interstate, is subject to the provisions of the act of Congress to regulate commerce. (*Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405.)

Upon the power of legislatures to fix tolls, rates, or prices, see note to case of *Winchester & L. Turnp. Road Co. v. Croxton* (Ky.), 33 L. R. A., 177.

A statute imposing a penalty for charging more than just and reasonable compensation for the services of a carrier, without fixing any standard to determine what is just and reasonable, thus leaving the criminality of the carrier's act to depend on the jury's view of the reasonableness of a rate charged, is in violation of the constitutional provision against taking property without due process of law. (*Louisville & N. R. Co. v. Com.*, 99 Ky., 132; 33 L. R. A., 209.)

Penalties can not be thus inflicted at the discretion of a jury. * * * The legislature can not delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a "fair and just return" on its investments, it must, in order to maintain the validity of the law, define with reasonable certainty what would constitute such "fair and just return." (*Louisville & N. R. Co. v. Railroad Commission*, 19 Fed. Rep., 679.)

The Supreme Court of the United States, in *Railroad Commission Cases*, 116 U. S., 336, sub nom. *Stone v. Farmers' Loan & T. Co.*, 29 L. ed., 646, refers to the last-named case and substantially approves it.

Although a statute has been held to be unconstitutional which left it to the jury to determine whether or not a charge was excessive and unreasonable in order to ascertain whether a penalty is recoverable, yet, where the action is merely for recovery of the illegal excess over reasonable rates, this is a question which is a proper one for a jury. (8 Am. & Eng. Ency. of Law, 935.)

The Iowa railroad commission act was attacked for uncertainty on the ground that

it did not prescribe what should constitute a reasonable rate; but as the statute declared that the rate fixed by the commission should be prima facie evidence that it was reasonable, although the accused could show in defense that it was not reasonable, the supreme court of the State held that the statute was sufficiently definite, since the rate was fixed, although it was subject to attack in the courts. To the claim that the commissioners' rate would not secure the accused from conviction if it was excessive, the court declared that the State was precluded from denying that the commissioners' rate was a reasonable one. (*Burlington, C. R. & N. R. Co. v. Dey*, 82 Iowa, 312; 3 Inters. Com. Rep., 584; 12 L. R. A., 436.)

The same decision in substance was made on this question by Judge Brewer, then of the United States circuit court, in the case of *Chicago & N. W. R. Co. v. Dey*, 35 Fed. Rep., 866; 2 Inters. Com. Rep., 325; 1 L. R. A., 744.

The Illinois act, providing that a charge by a railroad company of more than reasonable rates shall constitute extortion, is held to be sufficiently definite when construed with another section which provides that the railroad commission shall make a schedule of reasonable maximum rates. *Chicago, B. & Q. R. Co. v. People*, 77 Ill., 443.

And the validity of this provision of the Illinois statute has been further established by the Illinois supreme court. See *Chicago, B. & Q. R. Co. v. Jones*, 149 Ill., 361; 4 Inters. Com. Rep., 683; 24 L. R. A., 141; *Stone v. Farmers' Loan & T. Co.*, 116 U. S., 307; 29 L. ed., 636, deciding the same way the Mississippi statute.

The Georgia statute is not violated unless the rates charged exceed those fixed by the Commission. *Sorrell v. Central R. Co.*, 75 Ga., 509.

But in order to constitute a crime the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act can not depend upon whether a jury may think it reasonable or unreasonable. *Tozer v. United States*, 52 Fed. Rep., 917; 4 Inters. Com. Rep., 245.

An inquiry whether rates of carriers are reasonable or not is a judicial act; but to prescribe rates for the future is a legislative act. That Congress has transferred to any administrative body the power to prescribe a tariff of rates for carriage by a common carrier is not to be presumed or implied from any doubtful and uncertain language. If Congress had intended to grant such a power to the Interstate Commerce Commission, it can not be doubted that it would have used language open to no misconstruction, but clear and direct. *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479; 42 L. ed., 243.

In the case of *Munn v. Illinois*, 94 U. S., 113, 24 L. ed., 77, the Supreme Court of the United States, after a thorough review of the American and English authorities, has laid down the following fundamental principles governing public carriers and other quasi-public institutions:

1. Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his own property.

2. It has, in the exercise of these powers, been customary in England from time immemorial, and in this country from the first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, auctioneers, innkeepers, and many other matters of like quality, and in so doing to fix a maximum charge to be made for services rendered, accommodations furnished, and articles sold.

3. The fourteenth amendment to the United States Constitution does not in any wise amend the law in this particular.

4. When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public.

5. The limitation by legislative enactment of the rate of charges for services rendered in an employment of a public nature, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one.

Thus the highest court has permanently established the broad principle that the public have the right to regulate charges in all enterprises affected with a public use. To this doctrine all the courts have steadfastly adhered. In this leading case it was also held that the courts had no right to interfere with the rates fixed by the law-making power. This doctrine, however, has been since somewhat qualified in the case of *Reagan v. Farmers' Loan & T. Co.*, 154 U. S., 412, 38 L. ed., 1028; 4 Inters. Com. Rep., 1028, and other cases there cited, where it is held that when rates are confiscatory the courts may so declare and relegate the matter back to the lawmaking power for new rates, by which a reasonable profit is left to the carrier. But the principle that the legislative power, either directly or indirectly through a commission, can fix rates of freight and passenger traffic within this constitutional limitation, has been uniformly upheld in all the decisions of the United States Supreme Court upon this subject.

MONDAY, *April 14, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. Gentlemen, the committee is ready to proceed.

STATEMENT OF MR. E. S. LYON.

Mr. LYON. Mr. Chairman, I represent the Chicago Board of Trade, in part. Some gentlemen here will follow me who also represent that body. What I have to say will not take up very much of your time.

The CHAIRMAN. Let me ask you: A number of gentlemen have said that they represent this body and that body and the other. Please explain to the committee how, as a representative, you come here. Of course you have a perfect right to appear on your own personal account, and we are very glad to see you, but when a man comes in a representative way it is always desirable to know how anxious those whom he represents were to have him come.

Mr. LYON. Perhaps my credentials here would do if I should read them.

The CHAIRMAN. That will do.

(Mr. Lyon here read a letter from Mr. Warren, the president of the Board of Trade of Chicago, notifying him of his appointment to appear before the committees of Congress in regard to the pending bill.)

The CHAIRMAN. That was the action—

Mr. LYON. Of the board of directors.

The CHAIRMAN. Yes.

Mr. LYON. Of course the board of directors have only powers to take action by the particular committees—

The CHAIRMAN. What I want to get at is, I want to know how far there is a sentiment in that board of trade that authoritatively has asked gentlemen to come here, because that indicates the sentiment. A complimentary request from the president of the board asking some gentleman to appear here who is traveling in this part of the country does not mean much, but if the board of trade, by their own action, had a meeting and thought this a matter of sufficient importance to have a gentleman come here specially to represent them, that means one thing—

Mr. LYON. Without flattering myself, Mr. Chairman, and without any egotism, I would say that in 1899 I was the president of that organization, and consequently I know a little something of the powers delegated to the directors. The board of directors are elected from that board of trade, 1,700 in number, to regulate its affairs. We have our committees, whose special duty it is to deal with these subjects, governing particular subjects that come from outside matters up to this board of directors. Those matters are never referred to the board as a whole, consequently the directors act in everything for the board. Now, this board indorse, I believe—although I am not a member now, I know they indorse—the Corliss bill, and they are anxious to have those recommendations carried out, and they have asked Mr. Chadwick to come here, and myself, and he will follow me after a while, and perhaps go into it a little more than I.

The CHAIRMAN. When was this legislation as embodied in the Corliss bill considered by the board of trade of Chicago?

Mr. LYON. By the directors of the board of trade?

The CHAIRMAN. No; by the board of trade.

Mr. LYON. It never was.

The CHAIRMAN. It never was?

Mr. LYON. No, sir. As I explained it awhile ago, the board of trade as a corporate body delegates to the directors its powers to do anything in a matter. Of course the individual members of the board, some 1,800, may have divergent views.

The CHAIRMAN. When was the subject considered by the board by directors?

Mr. LYON. I think some time since the first of January. I am not positive, but I think that is it. It is recently, since the bill has been before you.

The CHAIRMAN. Were the provisions of the bill discussed by the directory?

Mr. LYON. I think so; I was not there.

The CHAIRMAN. They had copies of the bill?

Mr. LYON. Yes, sir; Mr. Barry corrects me. He says that there was a copy of a resolution adopted by the board of directors filed with this committee.

The CHAIRMAN. Very well, I do not want to be unduly inquisitive, but I simply want to know how far this subject had been a matter of discussion, and how far there was a public opinion on the part of the board of trade of Chicago upon the subject.

Mr. LYON. Yes, sir.

The CHAIRMAN. And whether that had been——

Mr. LYON. Possibly I can, in what I am going to say to you here, go into that sufficiently. Mr. Chadwick, who is to follow me, is a director, and may answer you more fully. I have been out of office for two years.

It would seem possibly a little superfluous to one at this day to appear before a committee of Congress and show that the interstate-commerce law had been violated or to bring any evidence to that end. You have had abundant evidence and are surfeited, no doubt, with facts showing this to be the case; consequently I will not attempt to take up any of your valuable time to that end. Representing, as I have the honor to at this time, the great grain and shipping trade of the Board of Trade of the city of Chicago, I come before you to urge some change in the interstate-commerce law that will give us equal, stable, and uniform rates to and from all points.

The CHAIRMAN. Let me interrupt you there just a moment. If these interruptions are embarrassing to you, however——

Mr. LYON. As far as I can answer you, I will be glad to do so. I am not a lawyer at all.

The CHAIRMAN. You have spoken of the grain shippers of Chicago?

Mr. LYON. Yes.

The CHAIRMAN. Now, we have heard from many gentlemen here who represent the flour interests——

Mr. LYON. Yes, sir.

The CHAIRMAN (continuing). Who complain of you gentlemen shipping grain, and especially the shippers of wheat, of the very unusual facilities that you gentlemen have.

Mr. LYON. As I proceed you will perceive that I am a very small item. I am what is called a small shipper.

The CHAIRMAN. But you are conversant with the subject somewhat?

Mr. LYON. Yes, sir; I am, a little.

The CHAIRMAN. Now, if you will explain to us how this discrepancy of opinion arises between these gentlemen who are making complaint of the undue advantages that you have—

Mr. LYON. You are speaking of the millers?

The CHAIRMAN. Of the millers.

Mr. LYON. That I can not say. I am absolutely powerless to do that. I can not do that. You have had gentlemen here who can explain that to you. I am not a miller, but simply a small shipper.

The CHAIRMAN. It is from the fact that you are not a miller, but a shipper of grain, that I have come to you for information.

Mr. LYON. I do not know as to that. The Chicago Board of Trade, handling as it does the greatest bulk of grain of any market in the world, reaching out in all directions, West, Northwest, and Southwest, to bring this grain to market, and in turn supplying the markets of the world, both domestic and foreign, must of necessity be the barometer of prices and feel any and all outside influences that affect its prices. So that any deviation from tariff rates, known always, whether made in the country west, tributary to Chicago, whereby grain is diverted from its natural channel, or even by our own members, competitors with one another, is immediately felt and the market price of commodities dealt in on the Chicago market is influenced to a greater or less degree.

The CHAIRMAN. May I interrupt you again? What do you mean by grain being diverted from its natural channels?

Mr. LYON. Well, grain that is naturally—I will assume that—naturally tributary to Chicago, by reason of its lake advantages, is bought by Eastern parties, or perhaps parties on our own board, which is not sent through Chicago, but which reaches its destination by being sent around to outside junction points east of the river, or perhaps to St. Louis; and that we feel very much in that way.

The CHAIRMAN. Give us an illustration, if you please, of that diversion; some instance of a diversion from a natural channel.

Mr. LYON. Well, we will call the natural channel, for instance, Chicago. Now, our merchants in Chicago know where all this grain in Iowa lies, and in Nebraska, and in the Northwest and Southwest, and possibly through capital or some way else control it.

The CHAIRMAN. Give us an illustration of where it goes at times.

Mr. LYON. It goes to the seaboard.

The CHAIRMAN. By what routes?

Mr. LYON. Routes that are around Chicago, by belt lines, by junction points that do not bring it to Chicago at all.

The CHAIRMAN. That is, that do not bring it to Chicago elevators?

Mr. LYON. That does not bring it to Chicago. Yes; to Chicago elevators, if you choose to use that expression. Chicago elevators are where they take the lake route. But the first thing we know somebody is buying a lot of grain and taking it off to Baltimore and New York by a junction route and we do not get the benefit of that.

Mr. CORLISS. What harm does this diversion do?

Mr. LYON. By its going by a route different from that we have. For instance, the grain might be worth more in Chicago. Two and

two make four; it does not make three. We know that if it goes to Chicago it would make a better price than if it goes around.

Mr. CORLISS. Then you claim that these diversions are in consequence of a rate that is unlawful?

Mr. LYON. Yes, sir.

Mr. TOMPKINS. A discriminating rate?

Mr. LYON. A discriminating rate; yes, sir.

The CHAIRMAN. Suppose that is done, suppose the rate is discriminating against Chicago, or against this natural route that you speak of, it must be a lower rate?

Mr. LYON. Yes, sir.

The CHAIRMAN. Then it would inure to the benefit of the people at some other point than Chicago?

Mr. LYON. Yes, sir.

The CHAIRMAN. That, then, is the burden of your complaint?

Mr. LYON. Yes, sir. Well——

The CHAIRMAN. That under this rate, whatever it is, the commission merchants at some other place would have the benefit, rather than Chicago.

Mr. LYON. Presumably so.

The CHAIRMAN. Then your complaint is a local one and a personal one?

Mr. LYON. Possibly. Yes; yes, it is.

Mr. CORLISS. If you had the same rate as the other party, could you control the freight?

Mr. LYON. To a greater or less degree, because we own the property.

Transportation is necessary to the people. It is as absolutely a necessity to the prosperity of our nation as the air we breathe. Everyone should be treated alike, whether a large shipper, supplying the wants of foreign countries, or a small shipper, taking care of the needs of this country. All sorts of devices known to shippers and railroads should be open, and the great transportation lines of this country should treat each and every one alike. To use the language of one of our learned judges, "Freight rates should be as stable as postage rates, to everywhere and from everywhere alike." This is all we ask, and for such a law properly carried out we are willing to stand, to survive or fall.

I am a member of a grain firm and have been for the past twenty-four years. Formerly we belonged to that coterie of grain shippers designated as "small shippers." Previous to and about 1890 we sought to supply the wants of grain men in New England, New York, Pennsylvania, and Ohio, and throughout the Southern States, doing nothing but a domestic trade, and did exclusively a shipping business. Gradually this trade became smaller by reason of encroachments of larger shippers more favored by rates, and we were at last driven almost entirely out of the shipping business and obliged to take up other branches of the grain business. There are combinations of Western elevator companies with railway managers on different lines of roads, and all more or less competitors. Each railway wants the business. They are secret and powerful combinations with mutual desires for securing traffic. The rates and devices known only to railway men are never playthings.

The act to regulate commerce was passed solely to secure an equal distribution of the benefits of transportation, and to correct abuses

which had imperceptibly and gradually crept into the administration of the vast powers conferred upon railroad corporations.

The CHAIRMAN. Let me interrupt you there. I wish you would explain a little further the result of these combinations that you have referred to between the elevators along a given line of railway and the carrier; how do they operate? How do they operate upon the grain raiser; for his benefit or against him?

Mr. LYON. You are talking about the farmer?

The CHAIRMAN. Yes, sir.

Mr. LYON. Well, I am not one of the people who think that a high rate will give the farmer more for his grain.

The CHAIRMAN. No; these rates are evidently lower rates, because they have the potency that diverts this commerce from natural channels.

Mr. LYON. Yes, sir.

The CHAIRMAN. Now, if that is true—

Mr. LYON. Yes, sir.

The CHAIRMAN (continuing). And I assume that you know about it, the rate must be lower?

Mr. LYON. Yes, sir.

The CHAIRMAN. Now, if the rate is lower, who is the beneficiary?

Mr. LYON. Both the railroads and the elevators, in combination together.

The CHAIRMAN. The grain raiser is not a participator in that?

Mr. LYON. I do not know that he would be. I can not see that he would.

The CHAIRMAN. Ordinarily the shipper who has an advantage with a carrier has more of means with which to increase his business?

Mr. LYON. Yes, sir. The great elevator people of Chicago are connected with the railroads.

The CHAIRMAN. But I am not speaking now of great elevators in Chicago, because the traffic is diverted from them—

Mr. LYON. From whom?

The CHAIRMAN. The great grain elevators in Chicago?

Mr. LYON. No; I said they were combinations with the railroads.

The CHAIRMAN. I thought you spoke of the elevators along the lines of the railways.

Mr. LYON. I meant at junction points. I said the combination of Western railway companies with the railroad managers on the different lines of roads. See? The railroads themselves.

The CHAIRMAN. You will not understand, now, that the query I am making is a criticism or anything that is to be construed that way. We want to get some of the detailed information that you gentlemen have. When you talk about the generalities of this subject we have some ideas about that subject, and we can get that sort of information for ourselves.

Mr. LYON. I presume so.

The CHAIRMAN. But you have peculiar knowledge from your business relations, and that is what we want, to see what things the carriers do do in violation of the law, and what we can do, if anything, to correct that.

Mr. LYON. We know that the railways themselves—I say we know; now, I can not prove it to you by any evidence that might go in a court, but we know intuitively that the rates from Iowa, Nebraska,

and the west are cut to Chicago, and we know they are cut out of Chicago east.

The CHAIRMAN. Now, let us stop right there and find out who is the beneficiary of that cut.

Mr. LYON. The grain raisers themselves are not.

The CHAIRMAN. Not the raisers themselves?

Mr. LYON. Not the farmer, in my judgment.

The CHAIRMAN. The benefit begins, then, after the grain has accumulated in the local elevator, and the grain raiser, you think, has no participation in that benefit?

Mr. LYON. I can not reason it out in my mind that the farmer gets any benefit of any lower rate than he does from a higher rate.

The CHAIRMAN. Then in this particular case the local competition—the influence of that is suspended as concerns the farmer?

Mr. LYON. Possibly so. Of course, temporarily the farmer, if he has not sold his grain, might get a little benefit from a higher market or a cheaper freight rate; it might bring a little higher price to him for his grain temporarily, but these things regulate themselves after a while.

I do not want now to go into the question of the speculative part of it, because I am not in that business—about the hidden grain that you have all heard so much of. I will not go into that. It is not here at all. But that very question might enter somewhat into the discussion here as to the railroad rates.

Mr. ADAMSON. Do they make these combinations at certain seasons, after the farmer has sold out his crop?

Mr. LYON. Yes, sir; to a great degree they do. The farmer generally sells his crop in the fall.

The CHAIRMAN. You say the farmer sells his grain in the fall?

Mr. LYON. As a general rule.

The CHAIRMAN. Does not that depend upon circumstances? Where there is great poverty in the country it is sold early; and we have great famines, and all that sort of thing.

Mr. LYON. Yes; but generally the farmer has sold the grain to the small elevator dealer at his station in advance.

The CHAIRMAN. If he has money in bank he does not do it.

Mr. LYON. I would ask these gentlemen who are here before the committee this morning to correct me if I am wrong on any of these points.

Mr. ADAMSON. Do you not suppose this idea has something to do with the variation of rates—that in the crop season, when the crop is moving, the railroads have more than they can haul? I want to know what the reason is. Is it not that they make cheaper rates later in the season in order to get what hauling they can?

Mr. LYON. Not necessarily. The supply and demand would cover that, sir.

Mr. ADAMSON. Is not that a part of the variation of supply and demand?

Mr. LYON. Possibly so.

Mr. ADAMSON. And while the crop is moving the railroads have all they can do, and they cut rates later on to get more business?

Mr. LYON. But what I am after is, I do not want the railroads to give a rate to one man and deny it to me; that is the whole meat in the cocoanut on that.

Mr. ADAMSON. If they give you one rate and then, under later conditions, give a lower rate to meet that change—

Mr. MANN. Your theory is that if they all had the same rate there would be more competition in purchasing from the farmer?

Mr. LYON. Yes, sir.

Mr. MANN. And if they can afford to give a low rate to one, they can afford to give it to everybody?

Mr. LYON. Yes, sir; that is the meat in the cocoanut.

This Interstate Commerce Commission was not framed to impair business interests, but to conserve and protect. In the words of the Interstate Commerce Commission:

It had for its object to regulate a vast business to the requirements of justice, and was not passed for a day or a year; it had permanent benefits in view, and to accomplish these with the least possible disturbance to the immense interests involved.

But as the years since the enactment of the law have gone on and the law itself has been tried, it seems to-day as if the Commission (without reflecting in any manner upon the character and ability of its members) has signally failed in the exercise of controlling power; its mandates have either been supinely enforced or altogether evaded. The great complaint against the law and the Commission to-day is that it is a creation powerless to enforce its decrees.

I am of the opinion that the bill now before the committee, and known as "H. R. No. 8337," will meet the requirements and give to the interstate commerce law greater effectiveness. I believe the interstate commerce law should be so amended as a whole that under the light of experience and decisions of the courts of the United States the rights and interests of the people in general should be properly safeguarded under it and defined by it, and the responsibility of carriers carefully fixed and defined in it; and the power and scope of the Interstate Commerce Commission, including the right to fix rates and enforce their decisions, properly established by it.

I am not wise enough, nor am I lawyer enough to go into the details of this bill, its common sense appeals to me and I leave to others, and without doubt you have heard them, to argue out the amendments proposed in the bill now before you. My own experience in freight matters makes me believe that such portions of the bill now before you as relate to the imprisonment clause in the original law should be dropped and that fines against corporations violating the law be imposed. Railroad officials and agents hold—

The CHAIRMAN. Now, let me ask you why would you change that feature of the law?

Mr. LYON. Let me continue. Railroad officials and agents hold social positions among themselves and in the community; different shippers are personal friends of one another; for one to complain of another and send him to imprisonment for violating a law which we know emanates from corporations themselves goes against our best feeling. But if a fine could be imposed on corporations, who are in reality above agents and general managers, and in fact the real offenders, our courts would now be full of violators of the law. Do you see the point now?

Mr. ADAMSON. We can not get the people who come here to give us the names of these men.

Mr. LYON. Of course not. You do not suppose I would tell you.

Mr. ADAMSON. What is the use of enacting more penal laws, then?

Mr. LYON. Fine the corporations. Fine the thing that does the wrong.

Mr. ADAMSON. How can we fine it. If we could get a reporter and get some evidence——

Mr. LYON. I believe, gentlemen, that I would not be here to-day asking you for relief if this law was in the original act; and if so, I do not believe there would be many railroads paying dividends, and many would be in bankruptcy, that is my belief.

The CHAIRMAN. Your argument, if I understand it, is about this: Here is a violator of the law. I know of his violations of the law; they are harmful to my interests. Yet that man is my personal friend, he is my familiar associate, and therefore because he would be imprisoned I will not complain of him. I will not set the machinery of the law at work against him because it would disturb my sensibilities in some way or interrupt friendly relations that exist between me and my friend.

Mr. LYON. We will go further than that——

The CHAIRMAN. Therefore you desire the law to be changed so that it will strike some other person——

Mr. LYON. Not "person."

The CHAIRMAN. Well, an artificial person——

Mr. LYON. Yes, sir.

The CHAIRMAN (continuing). That is, above my friend and the employer of my friend?

Mr. LYON. That is right.

The CHAIRMAN. Is that right?

Mr. LYON. Yes, sir.

The CHAIRMAN. In other words, you, in conjunction with the other gentlemen who are in with this man, have the power in conjunction with the other gentlemen who are informed to bring about punishments, and you do not use that power?

Mr. LYON. I suppose we have, but it is hard work; it is a very difficult matter.

Mr. ADAMSON. The same difficulty exists in other connections, does it not, except in criminal cases, where there are authorities who bring you up and make you swear?

Mr. LYON. Let me say this: I believe that if the Interstate Commerce Commission had agents in the markets of the West, in Omaha and Kansas City, and also in the markets of the East, they could find out the violators of the law in every case; I mean men who were in touch with them, men whom they could go to. Do you see?

Mr. CORLISS. Do I understand you to state that if this act, this bill now under consideration, were enacted into law and enforced it would bankrupt the railroads?

Mr. LYON. No; I believe that—yes, pretty near. Some of the railroads. Not all.

Mr. TOMPKINS. That is, if the offenses were as frequent as they are now?

Mr. LYON. I would have every carload that was shipped on a road——

Mr. ADAMSON. You do not mean that these roads would be bankrupt from the reduction in rates, from the rates they would have to receive, but from the fines they would have to pay?

Mr. LYON. Yes, sir; from the fines.

Mr. CORLISS. Oh, you left the impression that it would ruin the railroads—

Mr. LYON. No, sir; I did not mean that.

Mr. ADAMSON. If they quit bucking up against the offenses and observed the law, you do not mean to say that it would affect them?

Mr. LYON. No, sir.

Mr. CORLISS. It would not affect the railroads if they observed the law?

Mr. LYON. No, sir. I do not care what the rates would be.

Mr. CORLISS. But whatever anybody else pays—

Mr. LYON. Whatever the railroads say is to be the rate. Let them be honest and I will be honest, and let everybody else be honest; that is the common sense of it.

The temper, if not the spirit, of railway managers toward the successful administration of the interstate-commerce law has become more hurtful to the railways than to the public. But these corporations are in no sense exempt from public opinion because of the nearly universal, if not organized, opposition to laws enacted for the purpose of regulating their relations with the people. It is not too much to assume that the people hold these laws in higher and higher esteem to the ratio of contempt for them and the constant violation of their terms by the railways. This conflict between the railways and the interstate-commerce enactment has well-nigh exhausted the patience of the people and those who are appointed to execute its provisions.

That the law itself has demonstrated that it needs some changes to make it more applicable to present needs none will deny. The public demands at the hands of Congress some radical improvements. What we need, in reference to the Interstate Commerce Commission, is that its powers shall be more definitely specified; that it shall have greater powers to enforce its orders. We need an interstate-commerce law, and that the powers of its Commission be defined. I believe there is but one way to maintain reasonable, fair, and just rates, and that is by giving the railways the right to establish a rate and then go to the Commission and have that rate indorsed; publish the rate and live up to it. In a word, be honest. Heretofore Congress has seemed slow and apparently indifferent, but we believe needed changes in the law will be obtained and justice be done to all.

The CHAIRMAN. Let me revert to that subject which you were speaking of a while ago. Suppose the stockholders of the different carrying corporations turn over their powers to the board of directors; they in their turn turn over their powers to the general manager; the general manager abdicates in favor of the traffic manager; the traffic manager turns over the subject to the solicitors, to the rate solicitors, and they are the men who primarily make these illegal arrangements.

Mr. LYON. You mean the subagents?

The CHAIRMAN. Yes, sir.

Mr. LYON. No, sir; I do not believe that. I do not believe there was ever an agent on the line who voluntarily made a rate contrary to the powers over him. That is my experience in railroad matters, in shipping matters.

The CHAIRMAN. At all events, these gentlemen who have this in charge have upon them the duty of securing returns that will pay dividends on the stock.

Mr. LYON. I hope so.

The CHAIRMAN. Now, it is your opinion that if large fines against the corporations should be levied—

Mr. LYON. Yes, sir; for each offense.

The CHAIRMAN (continuing). So that these possible dividends would be diminished—

Mr. LYON. No, sir.

The CHAIRMAN (continuing). That then the stockholders would have an interest—

Mr. LYON. No, sir; I think the whole business would stop if they had a few fines to pay.

The CHAIRMAN. The stockholders would be the men who would be hurt?

Mr. LYON. Yes, sir.

The CHAIRMAN. Through the payment of these fines?

Mr. LYON. No, no; they would not pay the fines.

The CHAIRMAN. They would pay them until they learned the lesson.

Mr. LYON. That would be a very short time. If you would put a sufficient fine on every car that went through from Chicago to New York on a cut rate, one offense would end it.

The CHAIRMAN. That would be enough?

Mr. LYON. Yes, sir.

The CHAIRMAN. I am inclined to think you are right.

Mr. FLETCHER. What has been the rate on Chicago in the last year?

Mr. LYON. On wheat?

Mr. FLETCHER. Yes, sir.

Mr. LYON. We do not handle the wheat that they do in Duluth. We do not handle so much as they do in Duluth.

Mr. FLETCHER. Take all the grain in that way, and how much is the grain they handle there?

Mr. LYON. I can't tell you that. There are books here on file which show it.

The CHAIRMAN. I want to get your idea a little further about this diversion. Do you regard the shipments through Duluth as a diversion from Chicago—the natural channel?

Mr. LYON. No, sir; the Lake route is a natural channel.

The CHAIRMAN. Is the use of the Mississippi to New Orleans a diversion from natural channels?

Mr. LYON. I think not. Yes; it might be if it reached into the State of Illinois. I assume that. There is a lot of territory there that might ship to Chicago or the other way, which is just on the dividing line; but there is a point called Monmouth Junction, just near Burlington, where we have a lot of stuff billed to the Mississippi River, and then it goes to New York by Monmouth Junction. That is one of the places. I do not remember the other point.

The CHAIRMAN. Trace out the course of that route. Where does it generally go? What is its route to the seaboard?

Mr. LYON. It would be by the way of Monmouth Junction and Burlington to the Chesapeake and Ohio. I do not remember the route. It goes to Newport News and Baltimore.

The CHAIRMAN. It avoids Chicago.

Mr. LYON. Yes, sir; a gentleman said to me the other day that "it does not make any difference what rate of freight I have I am always afraid that the man next to me has a better rate than I have."

STATEMENT OF MR. T. W. TOMLINSON.

Mr. TOMLINSON. I am the railway representative of the Chicago Live Stock Exchange, whom I represent before your honorable body.

The live stock exchange last week considered the Corliss bill and directed me to come on here and express their views. I might also add that the Cattle Raisers' Association of Texas, with headquarters at Fort Worth, Tex., at its last annual meeting also had under consideration the so-called Corliss bill and adopted resolutions indorsing it, which mention that bill, and which are of course the best evidence that the bill was before them. I present these to you.

RESOLUTION UNANIMOUSLY ADOPTED BY THE CATTLE RAISERS' ASSOCIATION OF TEXAS AT ITS ANNUAL MEETING HELD AT FORT WORTH, TEX., MARCH 12, 1902.

Whereas the operations of the Interstate Commerce Commission under the present law are absolutely worthless, for the reason that they have no power to enforce their decisions; and

Whereas there has been introduced in the House of Representatives of the Fifty-seventh Congress, by Congressman J. B. Corliss, of Michigan, a bill amending the interstate-commerce act, correcting the evils, and giving the Commission power to enforce its rulings, which has the unqualified indorsement of the Interstate Commerce Commission and shippers at large throughout the country; and

Whereas the live-stock interests of the United States are heavy shippers and therefore interested in anything pertaining to governing transportation: Therefore, be it

Resolved, That the Cattle Raisers' Association of Texas urge the members of Congress to vote for the passage of this amendment to the interstate-commerce act, and be it further

Resolved, That the secretary of this association is hereby instructed to send certified copies of this resolution to the Committee on Interstate Commerce of the House, and also to write personal letters to the members of Congress and Senators from Texas urging work for the passage of this measure.

NATIONAL LIVE STOCK ASSOCIATION, DENVER, COLO.

The following memorial was unanimously adopted by the fifth annual convention of the National Live Stock Association, held in Chicago, Ill., December 3, 4, 5, 6, 1901: *To the honorable President, the Senate, and the House of Representatives of the United States:*

The National Live Stock Association respectfully represents that it is an organization composed of over 150 of the principal stock raisers, feeders' and breeders' organizations, live-stock exchanges, stock-yards companies, and various commercial organizations of the United States, whose names we append hereto; that it represents more than \$4,000,000,000 of invested capital, and that it was organized for the purpose of promoting the best interests of the live-stock industry of this country.

This association, in behalf of its constituency, earnestly urges upon Congress the great importance and increasing need of Federal legislation, which will give to the Interstate Commerce Commission adequate power to correct discrimination, remove preferences, abate unreasonable rates, and where necessary, to prescribe the maximum and minimum rates, making its decision effective pending any appeal to the courts.

When the present interstate-commerce law was enacted in 1887 it was at least popularly supposed, and we believe clearly intended, that it gave to the Interstate Commerce Commission, after due hearing and investigation, the power to say what was a reasonable or unreasonable rate and to enforce its decisions. Court decisions have since declared that the Interstate Commerce Commission does not have the power to fix rates for the future, either directly or by indirection. As substantially every complaint that has been, or would be, brought before the Commission involves the question of the reasonableness of rates, it can be readily seen that these court decisions practically wipe out the only real power the Commission was supposed to have, and limits its usefulness to the collection and promulgation of statistics.

While governmental control over railroad charges through the medium of the Interstate Commerce Commission has been gradually fading away, the general railroad situation has undergone portentous changes. Little independent carriers have been forced to the wall and absorbed by their larger competitors, which in turn have combined with or sold out to other larger competing systems, until to-day, by this centralization, the rail transportation facilities of this country are practically controlled by scarce half a dozen different interests. By these transitions, reorganizations, and combinations, added burdens have not only been placed upon the man who pays the freight by reason of increases in the fixed charges or indebtedness of the railroads, but his sole remaining safeguard by free competition has been virtually eliminated, so that the public, which now has greater need of intelligent and effective Federal supervision and regulation of railroad charges, has less protection to-day than previous to the enactment of the present interstate-commerce law.

The general and marked advance in rates during the past three years of unexampled prosperity to the railroads were apparently unnecessary and seemingly unwarranted upon any other theory than the intent of the railroads to exact all they could. The multiple economies of railroad operation, together with the enormous increase in the volume of the traffic, would seem to logically suggest a reduction instead of an advance. Their action, however, enables us to unmistakably forecast what they would do, unrestrained by Federal control, when by further consolidations or by other agencies competition becomes entirely stifled.

The members of the National Live Stock Association recognize that the railroads are powerful agencies of progress, and that more than any other factor they have contributed to the development of the country. The superb service they perform merits our commendation. We expect to pay the railroads the cost of the service they render, together with a reasonable profit on their investment; we do not want the service for any less, nor ought we to be compelled to pay more. We are not presuming to say what are or may be reasonable and fair rates, but we do emphatically protest against the railroads being the sole arbiters of their charges and exacting what they think the traffic will stand, or, in plainer language, all they can get.

If railroad rates are fair and reasonable the railroads should not fear any investigation of them by an impartial tribunal. The objections they make against the proper Federal supervision of rates by an expert commission confirms the suspicion that railroad rates need regulating.

Either the Government must assume at once an intelligent and comprehensive control over railroad charges or prepare for absolute ownership of the transportation facilities of this country.

For these, among many other patent reasons, the members of the National Live Stock Association respectfully request Congress to give early attention to this much-needed legislation, which has already been too long delayed.

Attest:

JOHN W. SPRINGER, *President.*
CHAS. F. MARTIN, *Secretary.*

The CHAIRMAN. I might say to you here that these hearings are for the purpose of discussing all of the subjects that relate to transportation, and there is another one that members of the association connected with the Cattle Dealers' Association have some interest in, namely, that of increasing the number of hours that animals may be retained on cars. I simply mention this to say that if it is your pleasure at this time to discuss that it will be entirely proper to do so.

Mr. TOMLINSON. I thank you for your suggestion, and in line with that, when I have finished, I will be very much pleased to say what the live stock people feel in respect to that bill.

The National Live Stock Association, with headquarters at Denver, Colo., and which includes in its membership practically all the live stock organizations of this country, with a membership of about 120, have also, at different and numerous times, passed resolutions recommending to Congress the advisability and necessity of the proposed changes in this present interstate-commerce law, and I would like, with your permission, to file as a part of my remarks the resolutions of both the National Live Stock Association and of the Cattle Raisers' Association. Cojointly with Judge Springer I am directed to represent the National

Live Stock Association in addition to my representation of the Chicago Live Stock Exchange and the Cattle Raisers' Association and the National Live Stock Exchange.

These organizations practically cover the entire live stock interests of the country. The Live Stock Exchange was a participant in the interstate law convention, held a short time ago, which framed the present Corliss bill, in a measure, and we feel it due to ourselves and your committee and to the public and to the railroads, that we come here and at least express our views upon this bill.

The live stock industry supplies a very great traffic for the railroads. On some Western railroads it is as high as 12 per cent, averaging perhaps a little under that. When you consider the vast number of other articles incidental to the operations of the packing houses you will see what a great volume of traffic really arises from the live stock industry.

This industry is interested not only in the relative equality of rates, but is deeply interested in their inherent reasonableness. We do not want our traffic transported at anything less than the cost of the service together with a fair added profit, and we also wish other classes of freight handled on the same basis. We protest against discriminations, and preferences, and against the carriage of some freight at less than the cost of service, thus placing added burdens on other articles. We believe that such is the wish of your committee.

The CHAIRMAN. Will it embarrass you at all to ask you questions?

Mr. TOMLINSON. Not in the slightest. I will probably make a very poor attempt at answering them, but I shall try.

The CHAIRMAN. You have made reference to articles that are carried below cost?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. Give this committee some illustration of that. Let me say to you—you are a practical man, I think—that we have our own theories with regard to general legislation, but we have not the practical knowledge that you have. Now, what we want to get at is what you can give us—illustrations of the case that you have generally referred to.

Mr. TOMLINSON. I believe the railroads continually say their export rates on grain are too low.

As to the rates that come particularly under my observation, I might say that the present rates on fresh meat, say from some of the Western markets to the Mississippi River, or to their eastern junction, via Chicago, are too low. Take, for instance, the through rates on fresh meats from St. Paul, through to the seaboard, or to the Eastern points. The proportion accruing west of Chicago is 13½ cents per 100 pounds, with a minimum of 20,000 pounds per car, or \$27 per car. The live-stock rate is twice that. Now one of those is wrong.

Mr. MANN. You say the rate on dressed beef is too low. What is the rate on dressed beef from Chicago to New York, now?

Mr. TOMLINSON. Forty cents.

Mr. MANN. Is that less than cost?

Mr. TOMLINSON. No, sir.

Mr. MANN. That is undoubtedly above the cost?

Mr. TOMLINSON. I think it is, probably, about a fair rate.

Mr. MANN. I am not speaking about whether it is a fair rate, but the cost. Is it not above the cost?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. Forty cents a hundred. Certainly that ought to be above the cost, if they can afford to carry grain for 13 cents.

Mr. TOMLINSON. Yes, sir; that is above cost.

Mr. MANN. Then that is not an illustration of a commodity carried below cost?

Mr. TOMLINSON. You did not understand my statement. I used as an illustration the rate on fresh meat from St. Paul through to the seaboard.

The CHAIRMAN. That is 27 cents?

Mr. TOMLINSON. No. Out of the through rate from St. Paul to the seaboard the line west of Chicago gets 13½ cents. That is, for their haul to Chicago they get 13½ cents on 20,000 pounds, netting them \$27 a car.

The CHAIRMAN. From Minneapolis or St. Paul to Chicago?

Mr. TOMLINSON. Yes, sir. Now, I say I think that is too low.

Mr. RICHARDSON. On through freight?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. What is it on grain for the same haul?

Mr. TOMLINSON. I could not tell you that.

Mr. MANN. What would it be on the same amount of live stock?

Mr. TOMLINSON. Twenty-seven cents.

Mr. MANN. That is not a comparison of rates.

Mr. TOMLINSON. The honorable chairman asked me a question, and I answered it.

Mr. MANN. I asked for rate that you thought was less than cost.

Mr. TOMLINSON. I think that is less than cost.

Mr. CORLISS. Do you know of any rebates on beef shipments?

Mr. TOMLINSON. Personally, I know of them only through reading the testimony of the railroads before the Interstate Commerce Commission at the last hearing regarding the rates on packing-house products and fresh meats in Chicago. That was published in a rather voluminous document, and I think all the roads admitted that they had been and were then paying rebates on shipments of fresh meats and packing-house products.

Mr. RICHARDSON. How do you explain the difference? Why is it that a railroad makes that difference between live stock and the beef which you have been talking about? I would like to understand why they make those differences and what influences them.

Mr. TOMLINSON. I think all railroads will agree with me that fresh meat ought to be charged higher than live stock and that what are known as packing-house products should take about the same rate as live stock. The Interstate Commerce Commission in 1890 considered a case which was known as the case of *The Chicago Board of Trade v. Various Western Railroads*, wherein the question involved was the relative rates on hogs and hog products from the Missouri River and intermediate points in Iowa compared with the rates on hogs. The Commission decided that the rate on products should not be greater than upon the live animal.

Another decision of the Commission, rendered about a year afterwards, in the case of *John P. Squire & Co. v. The Michigan Central Railroad*, involved the same point, except that it related to live cattle as compared with fresh meats, Mr. Squire alleging that the rates on the live article were too high compared with the rates on the fresh-

killed product. The decision of the Commission in that case was to the effect that they thought the rates on the fresh meats should be about 50 per cent higher than on the live cattle—on the live article. Those two decisions have not been observed. They are not observed to-day west of Chicago. East of Chicago they are well observed, I may say.

Mr. RICHARDSON. That is east of Chicago.

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. That is where they only get 13 cents, you say?

Mr. TOMLINSON. No, no. West of Chicago is where they get 13 cents as their proportion of the rates. The railroads recently reduced the fresh-meat rates from the Missouri River to Chicago, and the Mississippi River about 5 cents per 100 pounds.

Mr. RICHARDSON. How do you propose to amend the present interstate-commerce law to remedy this?

Mr. TOMLINSON. I think the most satisfactory remedy for cut rates would be to give the Interstate Commerce Commission reasonable power over rates. For example, if, when the Commission were absolutely certain that fresh-meat rates, or packing-house rates, were being cut from any market, they had the authority to order down the rates on live stock, there would not be any cut rates on the product.

Mr. FLETCHER. Will you please tell us why there should be 50 per cent more for carrying fresh-meat products than on live stock?

Mr. TOMLINSON. Well, fresh meat requires first a heavier car. You have to haul free a large quantity of ice; the service must be first class. And the mileage on refrigerator cars which are owned by the packers is a very heavy one. And finally, the value of the article is more than that of the live products.

A MEMBER. Does not the shipper furnish the ice?

Mr. TOMLINSON. Yes; but the railroad has to haul it, is what I say.

Mr. COOMBS. I should think that you could haul so much more that the rates would equalize.

Mr. TOMLINSON. But they haul less. A car of fresh meat rarely loads over 20,000 pounds, while live stock has a minimum weight of 22,000 pounds.

Mr. COOMBS. Why is that?

Mr. TOMLINSON. They can only load that much in a car.

Mr. COOMBS. I do not understand. Why do they haul less of fresh meat than of live stock?

Mr. TOMLINSON. Because they can not load any more. It is hung up in the cars on hooks, and you can not get much more than 20,000 pounds in a car.

Mr. COOMBS. I see. They do not pack it in?

Mr. TOMLINSON. No, sir.

Mr. RICHARDSON. I have not got your idea about the remedy. If I understand, the authority of the railroad commission at the present time is simply advisory?

Mr. TOMLINSON. Yes, sir; perhaps it goes to that extent.

Mr. RICHARDSON. It is merely a suggestion, and then an appeal can be taken by the railroad to the Federal court?

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. And there the question is passed on?

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. Now, instead of making the power of the Inter-

state Commerce Commission advisory merely, you want to make it arbitrary and have them enforce it right away—at once?

Mr. TOMLINSON. No, sir; I do not go quite that far.

Mr. RICHARDSON. That is what I want to get at—your views on that question.

Mr. TOMLINSON. I think the provisions of the Corliss bill providing for a twenty and thirty day stay of the order pending the—

Mr. RICHARDSON. A twenty-day stay.

Mr. TOMLINSON (continuing). Yes, sir; that is fair and reasonable to both parties in interest.

Mr. RICHARDSON. Then, all that you ask is that there shall not be any discrimination?

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. Do you not think that you are making a discrimination in that kind of way of making an arbitrary rule that the judgments of that Interstate Commerce Commission shall be enforced, and after they are enforced the railroad companies shall have an appeal; and do you not think if the higher court should happen to determine that the Interstate Commerce Commission was wrong, that its verdict was wrong in fixing the rate, that that would be a discrimination?

Mr. TOMLINSON. I do not.

Mr. RICHARDSON. You do not? Is there any such rule in any other court that has ever been established in a civilized country?

Mr. TOMLINSON. I beg the question with you on that. I am not a lawyer.

Mr. CORLISS. This is such a case as would occur in a patent case, where a preliminary injunction is obtained and then set aside, which repeatedly occurs.

Mr. TOMLINSON. As a point of equity I can not conceive what objection there is to it. It seems to me that it is entirely fair.

Mr. ADAMSON. If a man was under sentence to be hung, and took an appeal, the appeal would not do him much good after he was hung?

Mr. TOMLINSON. That is an exaggerated case.

Mr. ADAMSON. It may be an exaggerated case, but it illustrates the principle.

Mr. RICHARDSON. Your presumption is that the action of the Interstate Commerce Commission is presumptively right.

Mr. TOMLINSON. If we can not rely on a Commission of that kind, I do not know what we ought to expect from anyone, either the courts or Congress, for that matter.

The CHAIRMAN. Do you know of any other commission that was ever created to which such an extraordinary and immense power was given as has been proposed here?

Mr. TOMLINSON. I think all the State railroad commissions.

The CHAIRMAN. The railroad interests of the United States represent possibly ten billions of dollars. The value of that railroad property is dependent upon its earning capacity.

Its earning capacity must be dependent upon the rates it charges. Now, where has any like power to this ever been conferred upon three men; that is, if you have any illustration to give us?

Mr. TOMLINSON. I do not wish to be understood as saying that I believe that the Commission ought primarily to make rates. I do not. It should only be done upon proper complaint and after investigation.

As to your question, I have always understood that the State railroad commissions have that power.

Mr. RICHARDSON. The State railroad commissions?

Mr. TOMLINSON. I think our Illinois commission pretty nearly has that power.

Mr. ADAMSON. You do not mean that it has power that if the decree goes into operation, notwithstanding other litigation——

Mr. TOMLINSON. I do not know that I quite understand you.

The CHAIRMAN. The point that we make is that all other courts which have similar power have it with this incident, that if a party be desirous to appeal you shall not put a judgment into execution but once, but have it await the final judgment on appeal. Do you say that your State commission has power to fix rates that go into effect immediately, although an appeal is taken, or does the judgment stand suspended until the appeal is determined?

Mr. TOMLINSON. I could not answer you on that point. I will reserve my reply until I can look into the matter further.

Mr. MANN. You stated your opinion on the question as far as the Illinois commission is concerned. I think there is no appeal from the railroad and warehouse commissioners there.

Mr. TOMLINSON. Yes, sir.

Mr. MANN. But any railroad can enjoin in any action, without question, in any court.

Mr. COOMBS. Take the railroad commission of California; it is created by the organic law, by the constitution of the State itself. It is vested with judicial powers. It is not provided that any appeal shall lie upon its adjudication. However, courts can review the determination of the commission, can enjoin the commission, or can treat it like any other body that has purely administrative powers.

Mr. TOMLINSON. So far as the present bill is concerned, I think it is perfectly fair in its provisions regarding an appeal. The court, if I understand the bill properly, is granted the privilege of staying the order, or suspending the order of the Commission, if any error appears in it. That is equivalent to saying that if they do not rescind the order, the two, the court and the Commission, have passed upon it and think it fair. It seems to me that it having gone that far there is no good reason why it should not go into effect.

You must understand, gentlemen, that a great many people who may not be exactly directly interested in any particular rate, yet are vitally affected by it, and if an order of the Commission would have to be held in abeyance until the final decision of the Supreme Court a vast number of people who have absolutely no redress at law will be seriously injured by it.

Mr. MANN. Is not every interest in this country held in abeyance in exactly that way? Can you name any interest in this country that is not held in that way, subject to the right of every man to take an appeal and go to a higher court?

Mr. TOMLINSON. That is true; yes, sir; but the transportation facilities of our country are of such a nature that they require different treatment. Otherwise, you will get no satisfaction at all.

Mr. MANN. If I understand, your special complaint is that dressed meats are given too low a freight rate in comparison with live stock?

Mr. TOMLINSON. Pardon me, Mr. Mann; I came here not with a view of injecting anything regarding fresh-meat rates into my testi-

mony. Your honorable chairman simply asked me about it, and I cited him one instance where I thought the rate was too low.

Mr. MANN. What is the special complaint of the live-stock board or the live-stock men?

Mr. TOMLINSON. Our plea is for fair, reasonable, and stable rates.

Mr. MANN. Everyone wants that; but what is the special complaint of the live-stock people at Chicago, or elsewhere?

Mr. SHACKLEFORD. Is it a discrimination that you complain against?

Mr. TOMLINSON. No, sir. We want the law amended so that the Interstate Commerce Commission will have the power to investigate and see what rates are reasonable and just, and we want more legal effect given to their decisions.

Mr. MANN. I know; but we are trying to ascertain what the complaints of the shippers and other people are.

Mr. TOMLINSON. I can cite several instances, if you wish me to.

Mr. MANN. Generally, if you please.

Mr. TOMLINSON. Do you wish me to cite an instance of where we think we have a grievance?

Mr. MANN. If it does not take up too much time.

Mr. RICHARDSON. Not a single instance, but the general principle. Where is the complaint?

Mr. SHACKLEFORD. Give us an instance which would illustrate the general complaint.

Mr. TOMLINSON. I will give you an instance first of the operation of the present law, so far as the enforcement of an order of the Commission is concerned. The Interstate Commerce Commission rendered a decision in a cause known as the "Two Dollar Terminal Case." After that decision was made, an order was issued; the railroads appealed from that order, or applied for a rehearing, which is granted, and that resulted in a stay of the order. After rehearing the Commission reaffirmed its previous decision and put the order into effect at a date about a month later. The railroads ignored that order; we had to go into the courts and endeavor to enforce it; we went into the courts, but before we got a decision it was fourteen months after the order of the Commission was rendered. We had exercised every reasonable precaution to hurry this case along, and that was the best that we could do.

Judging from that, it is pretty safe to say——

Mr. MANN. You ought not to stop there; you ought to say that the court decided against you.

Mr. TOMLINSON. Yes, sir; but that makes no difference. I am simply referring to the delay in getting a decision from the court.

Mr. MANN. That decision you speak of involved a large amount of money to the railroads?

Mr. TOMLINSON. Yes, sir; and it is now pending in the Supreme Court.

Mr. MANN. It is pending in the Supreme Court, and it was decided against you in the court of appeals.

Mr. TOMLINSON. Yes, sir; with a divided court.

Mr. MANN. And yet you think that the railroad companies ought to have been deprived of that money pending the decision of the court, which was against your contention?

Mr. TOMLINSON. No, sir; I do not. I cited that to show this: That it was about fourteen months under the present method of procedure

before you could get any action from the courts, regardless of what the action of the court was. But, under this present bill, fifty days is the limit within which you must at least secure from the courts some announcement as to the legality of the decision of the Commission.

Mr. MANN. Just take that case. The railroad companies or the stock-yards companies, I do not know which it is, had always charged \$2 a car for terminal shipping freight. Now, you wished to eliminate that charge. The Interstate Commerce Commission decided in your favor. The courts, as far as they have gotten, have decided against you?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. And yet you think before the court had a chance to decide it that the change ought to have been made, and the railroad companies should have been deprived of that money, although the courts afterwards decided, and the Supreme Court of the United States may decide, that they were entitled to it? Do you not think that is a rather hasty action, taking a man's property, if he is entitled to it, before he has a chance to have a decision by the court?

Mr. TOMLINSON. I think this fifty days would have given any court ample time to have decided that case.

Mr. MANN. Well, of course, on that point the board had the same opportunity to decide within fifty days—and, by the way, there is no fifty-day provision in this bill—it had it before just as it would if this bill became a law.

Mr. TOMLINSON. They have to say within fifty days whether the order shall go in effect.

Mr. MANN. Is there a thirty-day provision in the bill?

Mr. TOMLINSON. Twenty days and thirty days.

Mr. MANN. And if the court says plainly that there is an error of law, or plainly that there is a misunderstanding or an error of fact, then the court shall give a stop order; but that must be a plain opinion on the court's part.

That is not an illustration of your complaint against the present system of the railroads. What is the general complaint of the stock-yards people or the live-stock people now as to their treatment by the railroads?

Mr. TOMLINSON. Well, I might cite that the present complaint is that the rates on live stock from Western points is relatively too high compared with the rates on the products. That is one incident.

Mr. MANN. You mean compared with the rates on meat products?

Mr. TOMLINSON. From the West; yes, sir.

Mr. MANN. Now, the railroad companies have given a good deal of attention to that subject, I suppose. They are endeavoring to make money and to foster business along their lines?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. Do you think that the Interstate Commerce Commission, after a short hearing on the complaint, ought to be permitted to decide that question, on the theory that they know more about it than all the railroad officials combined through all the years have learned?

Mr. TOMLINSON. That is upon the assumption that the rates are made by the railroads upon careful consideration, which is not a correct premise to start upon.

Mr. MANN. I expect that is true.

Mr. TOMLINSON. I think any disinterested party, the Interstate

Commerce Commission, or the court, or this committee, is much more competent to make these railroad rates, after a thorough investigation, than are the railroads when they are influenced by competition and by selfish motives of one kind or another.

The CHAIRMAN. I do not know that we could do that if all the gentlemen who come before us are as chary about giving us information as those have been who have come before us so far.

Mr. TOMLINSON. I trust that you will not apply that to me.

The CHAIRMAN. We have had no specific information since this investigation began. A great many generalities are indulged in, but when we ask for specific instances we do not get them.

Mr. TOMLINSON. I will go on with a few other instances.

The CHAIRMAN. Now, we want to know the actual operation of this law and the conduct of the people under it. Now, if you will give us that information, any of you gentlemen, we will be very glad. Do not be at all alarmed about taking up our time.

Mr. TOMLINSON. The Cattle Raisers' Association of Texas about two years ago, after the rates from Texas on live stock had been advanced about 5 cents a hundred, arranged for a conference with all the railroads leading from Texas with a view of showing that the advance was unreasonable and unwarranted and unjust and having it withdrawn. They met with all the railroads in St. Louis, and from what the railroads said at and shortly after this conference they led the representatives of the Cattle Raisers' Association to believe that there was great merit in their complaint and that the rate would undoubtedly be put back to the old basis. About a month afterwards the Cattle Raisers' Association was informed, through the secretary of the Southwestern Traffic Association, that after due consideration they did not think the rates were unfair and they would not make any change.

The CHAIRMAN. What was the old rate?

Mr. TOMLINSON. Forty-four and three-fourths cents. Now, I just mention that as one incident. The rate from Fort Worth to Chicago was 44½ cents, and it was advanced to 49½ cents. Of course, all rates differ down in that country, but that rate covers as a sort of a blanket rate all of the northwestern part of Texas.

Just at the time that the railroads announced that they would not grant any reduction every large cattleman in Texas had a cut rate, in no instance more than, and in many instances less than, the advance that had been made. In other words, they cut the rate from \$10 to \$15 a car right after an advance.

The only people who did not get that rate—

The CHAIRMAN. That was a secret cut?

Mr. TOMLINSON. A secret cut. The only people who did not get that rate were the small shippers.

The CHAIRMAN. Is there anything in this bill that will correct that?

Mr. TOMLINSON. I think it would go a long ways toward doing it.

Mr. MANN. Fixing the rate would not do it?

Mr. TOMLINSON. Yes, sir; if the railroads are able to pay to these large shippers such an immense amount of rebates, I believe they are able to haul the small shippers' freight on that basis. If the Commission would so order the rates to be fixed, I believe the shipper would have protection.

Mr. MANN. Your theory is that every time the railroads cut a rate

the Interstate Commerce Commission ought to reduce the scheduled rate to the cut rate?

Mr. TOMLINSON. I think there would be no more cut rates, and I think the position is absolutely sound, for precisely the same reason that Mr. Lyon stated. If you fined the railroads there would not be any more cut rates. If the Commission had the power, when the railroads put in these secret cut rates, to say what the rate should be on any other classes of traffic that were discriminated against and subjected to an undue prejudice—

The CHAIRMAN. You think this cutting of rates has been going on probably ever since the enactment of the law?

Mr. TOMLINSON. No doubt, and long before.

The CHAIRMAN. But the discovery of them was in the proceedings in Chicago quite recently, was it not?

Mr. TOMLINSON. Well, it has been current knowledge with, I think, everybody who has been at all in touch with the rate situation, for a long time. It has only been given current publicity in this last investigation—

The CHAIRMAN. People have had a sort of inchoate belief that this was going on?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. And has there been any public knowledge of it that could be used in courts as evidence?

Mr. TOMLINSON. There have been a number of times when the public tariffs have been reduced down to a basis considerably less than the one previously in effect, and then there has been a reinstatement shortly afterwards.

The CHAIRMAN. What would that prove?

Mr. TOMLINSON. It would prove that the railroads got into a fight among themselves, and—

The CHAIRMAN. What would it prove on this question of cut rates or secret rates being given to individuals?

Mr. TOMLINSON. It would prove conclusively to my mind that there had been cut rates, and that this was the result of it, that this published low rate was the result of it.

Mr. COOMBS. You think the producers of wheat, the wheat raisers, will agree with you in the position that you take in reference to that question?

Mr. TOMLINSON. The wheat men?

Mr. COOMBS. The wheat men; the producer; the farmer himself?

Mr. TOMLINSON. I do not believe I quite catch your question.

Mr. COOMBS. In your position about cut rates, do you think the producer, the wheat raiser, is in accord with your views?

Mr. TOMLINSON. The live-stock man is. I will not speak for the wheat man.

Mr. COOMBS. Now, of course, the reason I ask is that I like to get the views of everybody and of every interest. The wheat-raising interest is a considerable interest in this country.

Mr. TOMLINSON. Yes, sir.

Mr. COOMBS. And they need the advantages that they naturally get, as a rule.

Mr. SHACKLEFORD. Would the same advantages be beneficial to any other industry?

Mr. COOMBS. I am speaking now of the wheat industry; do you think you can speak for them?

Mr. TOMLINSON. I would not assume to speak for them as long as they have other and abler representatives. I speak simply for the live-stock people.

The CHAIRMAN. The time for adjournment has arrived, and if you will resume to-morrow at half past 10, we will be glad to have you do so.

Mr. TOMLINSON. I will be very pleased to.

Thereupon, at 11.45 a. m., the committee adjourned until to-morrow, Tuesday, April 15, at 10.30 o'clock a. m.

TUESDAY, *April 15, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Mr. Tomlinson will you proceed?

STATEMENT OF MR. T. W. TOMLINSON—Continued.

Mr. TOMLINSON. At the conclusion of my remarks yesterday, I was talking about violations of the act, and at the same time it seems eminently proper that I should file with this committee for information, but not to appear as a matter of record, the testimony in the matter of the transportation of dressed meats and packing-house products taken at a hearing of the Interstate Commerce Commission in Chicago in March, 1901.

The CHAIRMAN. Let me say, Mr. Tomlinson, that that is not satisfactory to the committee. That is accessible to us as it is to you. You come here and make charges against the operations of the law. Now, we want to know from you what you know.

Mr. TOMLINSON. My purpose in filing this was simply to show violations of the act, and in support of what I have already stated.

The CHAIRMAN. Yes. That, of course, we could obtain without troubling you for it.

Mr. TOMLINSON. I thought that I was perhaps serving the convenience of the committee.

The CHAIRMAN. We are grateful for that, of course, so far as it goes. Now, if you have any knowledge, we would like to know it; or, if you have not any knowledge, of course, you can say so.

Mr. TOMLINSON. I have knowledge to this extent. The rates on fresh meats and packing-house products are continually cut from the West through to the seaboard.

The CHAIRMAN. How do you know that?

Mr. TOMLINSON. Because I have heard the admissions of the railroads before the Interstate Commerce Commission.

The CHAIRMAN. Which railroads?

Mr. TOMLINSON. Every one of them.

The CHAIRMAN. Who was speaking for them?

Mr. TOMLINSON. The traffic managers.

The CHAIRMAN. Will you give us their names?

Mr. TOMLINSON. Paul Morton of the Santa Fe, Mr. J. M. Johnson

of the Rock Island, Mr. T. T. Storer of the Great Western, Mr. Holland, I think, of the St. Paul, Mr. Thomas Miller of the C. B. and Q., Mr. Drias Miller, who is in charge of the traffic of the reorganized Burlington system, and several others.

The CHAIRMAN. Now, commencing with Mr. Paul Morton, what admissions did you hear him make?

Mr. TOMLINSON. I heard him say that the Santa Fe was unable to get what they considered was their fair share of the fresh meat and packing-house products out of St. Joe and Kansas City, and on that account they were compelled to make a secret contract with one large shipper at 5 cents less than what was then the published tariff.

The CHAIRMAN. Who was that shipper?

Mr. TOMLINSON. Schwarzchild and Sulzburger.

The CHAIRMAN. When was that contract made?

Mr. TOMLINSON. Some time in June of last year.

The CHAIRMAN. How long did it endure?

Mr. TOMLINSON. Until June 1, 1902.

The CHAIRMAN. Under that contract what sums were paid to the other party?

Mr. TOMLINSON. I can not tell the exact sums.

The CHAIRMAN. Can you approximate it?

Mr. TOMLINSON. I believe Mr. Morton said in effect that it mounted into the hundreds of thousands of dollars.

The CHAIRMAN. Who was the next gentleman that you named?

Mr. TOMLINSON. I think the Rock Island shipper, Mr. J. M. Johnson.

The CHAIRMAN. What did you hear Mr. Johnson admit in this direction?

Mr. TOMLINSON. He admitted that it was necessary to meet the Santa Fe secret rate, which they did by rebates, or by vouchers, whichever way you care to put it.

The CHAIRMAN. To whom was that rebate given, did you hear him say?

Mr. TOMLINSON. It was generally given to the various traffic people representing the packing concerns.

The CHAIRMAN. All of them alike?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. Did he state what those rebates amounted to in their aggregate which had been paid?

Mr. TOMLINSON. I believe he did not state exactly, but left the impression on my mind, at least, that it amounted to a vast sum of money, as did all the other gentlemen who appeared before that Commission.

The CHAIRMAN. They all made substantially the same confession?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. With regard to the operation of their roads?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. And the violation of this statute?

Mr. TOMLINSON. Yes, sir. My purpose, Mr. Chairman, in referring to that is this, the existence of these low-product rates to the river markets, as against what we consider high rates on live stock from intermediate points in Iowa and Missouri, works seriously to the detriment and the prejudice of the live-stock men located, for example, in Iowa. It puts the live stock which may be raised upon ground less valuable than is the territory east of the Missouri River in direct

competition with that stock which is raised upon ground perhaps—undoubtedly—more valuable.

And in that respect I would like further to say that the operation of these rates is not only a serious disadvantage to the live stock people in Iowa, Missouri, or Minnesota, but it is also a decided prejudice to the people who operate at Chicago. With that in view I have filed a formal complaint before the Interstate Commerce Commission, asking for an investigation of the entire situation relative to the rates on live stock and on these products, and have asked them to enforce the orders rendered some ten years ago. In filing this complaint before the Commission we are aware fully that the Commission has no power to fix rates.

We are further aware, even though we got an order from the Commission directing the roads to cease and desist to certain of their practices which may be found to be unlawful, that there would be little benefit to accrue to the interests which I represent from their decision if favorable to us, and I would like to ask you if you gentlemen can suggest to us any remedy we can pursue under the present law or through the courts that will enable us to get what we consider fair and reasonable rates? We know of none except through the Commission, which can not fix a rate. The courts have not the power to fix the rates, it being a legislative function. If we get an order from the Commission it may be two years before we can enforce it. By that time the situation may be changed, changed materially. The people who are hurt have no remedy. The people who are injured frequently, generally, are not the people who pay the rate.

In summarizing the views of the live stock industry upon the proposed bill, I might briefly say that we believe legislation ought to go further than this proposed bill. We are not willing to give our assent to anything less. I have heard it said and I believe there is a bill before the Senate which permits pooling. While pooling might result in more stable rates, while it might prohibit rebates and discriminations and undue preferences, and while it might help some small middlemen who at present suffer by reason of not getting the rates accorded to their larger competitors, while it might aid certain individuals who had suffered from certain prejudices, yet the live stock industry is not prepared to indorse the pooling feature, and our reason is this: The railroads desire a pool or a pooling privilege; for what? We do not think it is from any charitable motive, to prevent discriminations, or to correct undue prejudices. It is from the very selfish motive that it would give them more revenue. We can not consent to the granting to the railroads of any machinery which will give them the power to extract any more money from either the producer or the consumer for the service they render. We believe that the railroads are to-day earning fully all they are entitled to. If by reason of the pooling bill they might be able to get greater returns on some highly competitive traffic, we want some absolute assurance that other traffic will be handled for proportionately less.

At the hearing in Chicago on what is known as the community of interest plan, Mr. James J. Hill and Mr. Harriman stated in effect that the railroads could be relied upon to always charge reasonable rates; that the interests of the railroads in the country which they traversed was such that on a natural and proper amount of traffic reasonable rates were necessary, and therefore they drew the con-

clusion that the railroads would only charge reasonable rates. They ask us, in effect, to take their word for it. They do not believe each other, and yet they ask the public to believe them. Mr. Hill stated further that the Great Northern Company could not "with a good face" (those were his words) charge more than 7 per cent on its stock. It earns more than that.

What is to prevent the Great Northern or its affiliated interests from buying some other property at perhaps a ridiculously high price and then being compelled to earn on the Great Northern stock considerably more than 7 per cent.

Every tendency in the past five years has been to strengthen the condition of the railroads so far as their rates were concerned. Consolidation after consolidation has been made; fixed charges have been increased; competition has been almost eliminated. As a matter of fact, the necessity for a pool is past and over. The great railroad interests of the West are controlled by scarcely five people.

We do not feel that we can safely depend upon the confidence and generosity and fairness of these people to charge what is only fair and reasonable. We feel that the Commission should be put upon a plane much higher than it is to-day; that it should be given power far greater than is contemplated in this act. If we can not rely upon the Commission giving reasonable rates, I do not know why we should believe that the courts would do any better. No court, so far as I am advised, has ever decided that the decisions of the Commission were unreasonable. The Supreme Court of the United States, where it has reversed the Commission on any of its decisions, has not decided upon that point, but upon the point that they have not the power to make rates.

Yesterday the question was asked me as to whether any commission in any part of the country had as great a power as was asked for the Interstate Commerce Commission by the proposed Corliss bill. I have looked over many of the railroad laws of the different States, and I can not find any of them make any provision for review in the courts. There is a review, of course. There is a review should the commission attempt to enforce their order by penalty, but the roads could apply for an injunction in some United States courts, and on account, for example, of the rate being confiscatory.

The Illinois law, as Mr. Mann stated yesterday, does not make any provision for review. Of course, in a suit to enforce the penalty naturally the case would come up for review before the State courts. In a majority of the States the laws of which I have read there is no provision for any kind of review. There is this fundamental difference between the State railroad commissions and the Interstate Commerce Commission to-day: All the railroad commissions have power to primarily fix rates. The present interstate-commerce law does not give the power to the Interstate Commerce Commission to fix any rates. We do not ask for the privilege, for the power, to be given them to fix rates as a primary matter, but only upon investigation and after due hearing.

Once more referring to what we believe is very important, if any legislation is made by this present Congress, we feel that it should give more legal effect to the orders of the Commission. We can not support any bill that leaves indefinite for an indeterminate period the remedy which the Interstate Commerce Commission may seek to

give the public. Railroad rates to-day are higher than they have been for ten years. This is not a statement made unsupported. The absolute evidence is obtainable. While it may be said by the railroads that the rate per ton per mile has been decreasing, which is true in some instances, that does not mean that the rates are lower. It might mean, and it does mean, that a greater volume of low-class traffic moves on low rates than previously moved on the same rates.

The Department of Agriculture published recently—and I wish to refer to it in order that the committee may, if they so desire, examine it—a bulletin (No. 15, revised, miscellaneous series) which gives the changes in the rates charged for railway and other transportation services. It goes back as far as the records were obtainable and gives concisely the rates in effect upon various commodities. This amply supports what I have said.

The live-stock industry is vitally interested in this legislation. We feel there ought to be no question in according to the public what we think is reasonable, and our views are expressed in this bill, the Corliss bill.

I thank you very kindly for your attention. If there are any questions, I will be glad to answer them.

The CHAIRMAN. Before you take your seat, just a word more. You have said that this bill, in the power that it gave to the Commission, did not meet your views and those of your confrères, for the reason that it did not go far enough. Now, will you give us your opinion as to what should be done further than what is provided for in this bill?

Mr. TOMLINSON. I touched briefly on that yesterday when I said that the Commission ought to have absolute power over rates. In other words, without an investigation and without a hearing upon the case which might be in point—not, however, without due previous knowledge, acquired through their hearings or elsewhere—that the Commission might have the power to order down or up any rates which, by reason of some cut rates or rebate, might prove to be unreasonable. That would, more than any other thing, prevent these cut rates.

I said yesterday, in support of what Mr. Lyon said, that this was substantially equivalent to the fine provisions of the present bill. I think it is a little more potent.

The CHAIRMAN. What would be your idea of the permanency of the rate thus established, and what provisions would you make for alteration, if any?

Mr. TOMLINSON. I think that, as provided in the present bill, two years is a proper figure.

The CHAIRMAN. What would be your policy then—to allow the company to fix its own rate?

Mr. TOMLINSON. Certainly.

The CHAIRMAN. Or to go back to the disturbed rates?

Mr. TOMLINSON. To leave it entirely to the discretion and judgment of the railroad unless the Commission saw fit to make a subsequent order.

The CHAIRMAN. Now, would that involve, in your judgment, the necessity for exercising a power over classification?

Mr. TOMLINSON. I think so; yes, sir.

The CHAIRMAN. Would you favor a uniform classification for all portions of the United States?

Mr. TOMLINSON. I would hardly favor it. I might also say that the

interests which I represent are only slightly concerned in classification, but from a theoretical and practical standpoint I think there are no two sides to that question.

The CHAIRMAN. Well, of course you have given attention to the question of classification?

Mr. TOMLINSON. Yes, sir; practically all my life.

The CHAIRMAN. What would you do in reference to the foreign commerce and the through rate; how would you control that, or would you attempt to control it beyond the shippers?

Mr. TOMLINSON. Yes, sir; I think so. I think the export rates ought to be under the jurisdiction of the Commission. They are not to-day. Unless you have got some provision for the control of the export rate, it means that there are no domestic rates to the shipper. That may not be an unmitigated evil to the consumer or the producer.

The CHAIRMAN. What would you do with those roads that participate in our interstate commerce, and yet are beyond the jurisdiction of our courts?

Mr. TOMLINSON. You mean foreign roads?

The CHAIRMAN. Canadian roads—foreign roads.

Mr. TOMLINSON. I have not given the matter enough attention, Mr. Chairman, to talk intelligently on that thing. There have been a number of cases before the Commission, and I think the United States roads have been usually able to bring the Canadian roads to "time," if I may use that word. In such cases as have been before them they have carried their point. There is a comity of interest even between roads of foreign countries and this country that compels them to recognize certain rates among themselves.

Mr. CORLISS. I would like to ask you a question: Do you not think the present rebates and discriminations in rates are the greatest evil that now affects the business interests of our country?

Mr. TOMLINSON. I think they are; yes, sir. And I would like to add to that statement the further belief that in the future there will be more complaint against the inherent unreasonableness of rates than there will be against discriminations and preferences; this by reason of the consolidations and the multiple machineries that the railroads are adopting to regulate these rates. They will, I think, in time do away with the discriminations and undue preferences, but to-day that is the great evil.

Mr. CORLISS. If effective legislation was secured providing proper punishment in case of discriminations and rebates, do you not think that the traffic would be justly regulated thereby—the rate?

Mr. TOMLINSON. Do I not think that the result would be that the rates would be reasonable?

Mr. CORLISS. Yes.

Mr. TOMLINSON. I can not say—

Mr. CORLISS. And uniform?

Mr. TOMLINSON. It would be uniform, and that would be a decided advantage.

Mr. CORLISS. Well, with reference to different shippers, if all had to pay the same rate there would be no advantage to one over the other.

Mr. TOMLINSON. No. I say it would be a decided advantage to all concerned.

Mr. CORLISS. Do you not think there would be some danger in plac-

ing arbitrarily in one board of five men the power to arbitrarily fix rates?

Mr. TOMLINSON. I do not think so. In the past decisions of the Interstate Commerce Commission there have been no instances which have been declared unreasonable, which would lead me to believe that we can safely rely upon them. I do not know why we can not as safely rely upon them as upon the courts. It is incomprehensible to me, gentlemen, although I am a layman in this matter.

The CHAIRMAN. Has no method suggested itself to your mind whereby through simplifying methods by which a suitor could recover for excessive charges and by multiplying his damages that the same result could be accomplished as by giving this power to fix rates to the Commission?

Mr. TOMLINSON. I think not, sir, and for this reason that I have already stated; it is not the man who pays the freight who may be injured. It may be some consumer, some producer. It is unquestionably one or the other of those two gentlemen. They have no recourse. The middleman who pays the freight may have recourse, but not those men.

The CHAIRMAN. That will be upon the supposition that the members of the cattle raisers association did not ship their own products?

Mr. TOMLINSON. Yes sir.

The CHAIRMAN. But they do very frequently, do they not?

Mr. TOMLINSON. As far as the Texas Cattle Raisers' Association is concerned, they ship their own live stock generally. So far as the native live stock is concerned, and I might say fully 60, and perhaps 75 per cent of the receipts at any of the large markets, the stuff is bought by a buyer at the point of shipment and sent into the neighboring town.

It is not quite the same, as far as the live stock is concerned, as it is in the grain situation, but to the extent of the percentages that I have mentioned it is true. Take the State of Iowa. I suppose that 75 per cent of the live-stock shipments out of that State are purchased by buyers located at the different points. The farmer does not have any interest in it after he has sold the shipment to the buyer.

Mr. DAVIS. It affects his price; the price he gets for his cattle?

Mr. TOMLINSON. Decidedly.

Mr. DAVIS. He has it then; if it is indirect it is equally effective as if it was direct.

Mr. TOMLINSON. How is that?

Mr. DAVIS. The buyer in Texas calculates the amount of freight he has to pay when he pays the cattle man for his cattle, does he not?

Mr. TOMLINSON. You have lost the thread of the chairman's question. He asked me if the remedy for the recovery of unjust rate would not answer as well as the first law. I do not think any of these buyers would take into consideration the hypothetical point that they might recover from any reasonable rates on live stock.

Mr. DAVIS. I based my question upon the remark that you made in your reply, when you said that the cattleman, the man who sold the cattle to the buyer, had no interest in the freight rates.

Mr. MANN. No interest after the cattle were sold.

Mr. TOMLINSON. That was in connection with the previous remark, and should not be considered alone, sir.

The CHAIRMAN. A gentleman testifying here on a previous day

made the statement that the remedy of recovery was entirely elusive; that through the delay of the law, through the difficulties of court procedures and the expenses that wronged men who were deterred from bringing actions.

My question was suggested to you with a view of eliciting your opinion as to whether or not, if those difficulties of litigation were removed—for instance, if a commission—the commission—was instructed among its other duties to ascertain what the fair rate would be, and then some preference was given in regard to a hearing in cases of this kind with a provision for the recovery of counsel fees and multiple damages, if that would not be a safer remedy than the one of giving power to a small commission over this great interest.

Mr. TOMLINSON. No; I can not agree with you, Mr. Chairman, on that. I do not think so.

Mr. RICHARDSON. Why not?

Mr. TOMLINSON. For the reasons I have just stated.

The CHAIRMAN. Would not the certainty or the probability of speedy recovery, with the aids of the Commission and of counsel provided by the public, would that stimulate men who had been overcharged to ask proper recovery?

Mr. TOMLINSON. We think the essence of the act should be to procure for the public, for the consumer, just and reasonable rates, and as quickly as possible. We do not believe that a remedy such as you suggest would be at all adequate. It would be effective, no doubt, but it would not accomplish the purpose. The small shippers have no time to enter the courts. You doubtless know better than I do the difficulty of defeating the railroads in any kind of a case.

The CHAIRMAN. Well, I presume that one of the difficulties in litigation of this kind would be the difficulty of establishing on the part of a nonprofessional railroad man what was a just rate. I think that for myself I would have very little idea what a just rate was. But if there was a commission charged with the duty of studying that question and familiarizing itself with all the elements that constitute the cost of railway carriage I think that the matter would be infinitely simplified.

Mr. TOMLINSON. Yes, I think so; and I can see no reason, as I have already stated, after the Commission has done that, why it should not go into effect.

The CHAIRMAN. Then the Commission would simply go before a jury as any other witness—

Mr. ADAMSON. Do you think rates made by a commission would never be violated?

Mr. TOMLINSON. No, sir; I do not look for that ecstatic state of affairs.

Mr. ADAMSON. Would not litigation then, by reason—

Mr. TOMLINSON. I think I have repeatedly said that there would be less violations if the Commission was granted the power asked for in the present bill.

Mr. ADAMSON. How could there be less violations under one general blanket system of conditions than there are under the present conditions?

Mr. TOMLINSON. Because the Commission would then have the power to fix rates, and as they have not that power at present, and there

would be some legal effect given to their decisions, and there is not to-day.

Mr. ADAMSON. You do not expect the Commission to deal summarily with violations?

Mr. TOMLINSON. No, sir.

Mr. ADAMSON. Then the same courts would have to be resorted to?

Mr. TOMLINSON. It is put in a different position. It makes the duty of the railroads the affirmative duty of proving the order of the Commission unreasonable, and the complainant has to do that. To-day if we get an order of the Commission we have to go into the courts. Testimony of the Commission is not admissible before a court to-day. That is a startling statement, but it is nevertheless true.

Mr. ADAMSON. The chairman was suggesting a method of litigation—

Mr. TOMLINSON. The method was suggested by your honorable chairman, and he asked my opinion, and I said I did not think it went far enough, and I have stated the reasons why.

Mr. RICHARDSON. You really believe that the decision of the Commission, under the position you advocate, would be, in effect, final?

Mr. TOMLINSON. How is that?

Mr. RICHARDSON. The decision of the Commission under the policy that you now advocate would be, in effect, final?

Mr. TOMLINSON. No, sir.

Mr. RICHARDSON. Why would it not?

Mr. TOMLINSON. I am advocating the bill, and the bill speaks for itself, I believe.

Mr. RICHARDSON. I am talking about your views.

Mr. TOMLINSON. I gave some of my views personally.

Mr. RICHARDSON. I did not hear them.

Mr. TOMLINSON. Pardon me.

Mr. ADAMSON. Where there was a multitude of carriers, do you not believe that the secret discriminations and rebates would be worse than now, under the rates fixed by the Commission?

Mr. TOMLINSON. Where there were a multitude of carriers?

Mr. ADAMSON. You say that consolidation is rapidly going on—

Mr. TOMLINSON. Yes, sir.

Mr. ADAMSON. If there were a large number of carriers still in operation, then under your proposed fixing of rate by the Commission would not these secret discriminations or system of rebates be probably as bad as now, or worse?

Mr. TOMLINSON. There is, of course, a greater likelihood of discrimination and secret rate and evasions where there is a multitude of carriers than where there are only one or two.

Mr. ADAMSON. Under the other system of rates?

Mr. TOMLINSON. I have no doubt that there would be some discrimination. There is this condition which has entered into the field, gentlemen, and which is a marked departure in railroad matters. You doubtless know that injunctions have been issued for some of the railroads between Chicago and Kansas City.

For instance, the railroads must not charge anything less than their published tariffs. Similar injunctions have been asked for and granted temporarily against several eastern lines. The injunctions which have been granted so far against eastern and western lines have been only temporary. The bill filed, I believe, by the Commission will be

argued some time in June. The court in Chicago, sitting there, granted temporary injunctions. The roads did not oppose them. They did not oppose them, I personally believe, because they believed that it would result in a greater revenue to them.

Mr. ADAMSON. I will state my question in this way. Give the Commission power to fix the rates as suggested, then retain substantially the present number of competing carriers. What reason would you have, or do you have, to believe that there would be fewer discriminations secretly than now?

Mr. TOMLINSON. The provision of the bill provides for money penalties for rebates and evasions.

Mr. ADAMSON. How do you get them—through the courts?

Mr. TOMLINSON. Yes, sir.

Mr. ADAMSON. Then this litigation is not shortened any, is not lessened any?

Mr. TOMLINSON. How is that?

Mr. ADAMSON. The end of your litigation is just as far off as now.

Mr. TOMLINSON. Yes, sir; but I think there is no doubt, if the road is fined once or twice, it will let up.

Mr. ADAMSON. There is no doubt that it will pay the lawyers better, but the question is, Will you scare the railroads worse and reduce the temptation of violation?

Mr. TOMLINSON. I think so. I think the point that you are discussing is very ably met in the provision for the proper penalties against carriers instead of against individuals, as in the present law.

Mr. MANN. If the courts retain jurisdiction over these injunction bills, it will end all this—

Mr. TOMLINSON. I think so.

Mr. MANN (continuing). Form of trying to reach discriminations?

Mr. TOMLINSON. Yes, sir; and competition will be a word and not a reality.

Gentlemen, this is a serious matter to the public. Mr. Chairman, you reminded me yesterday that we were perhaps interested in a bill introduced by Mr. Stevens, of Texas, regarding the extension of time a little for the detention of live stock in cars in transit from twenty-eight to forty hours.

The CHAIRMAN. Yes, sir.

Mr. TOMLINSON. We are interested in this legislation, because we are interested in the wishes of the live-stock men. We know the operations of the present law. We know what the proposed law would effect. Briefly stated, it may be said that the only live stock affected either by the present law or the proposed amendment is range stock in the Northwest—stock in Texas. The bill emanated from Texas people. They are the best judges of the condition of their live stock. They have a greater interest in its reaching market in good condition than anybody else.

Inhumanity to live stock prevents results by depreciation of appearance, and a consequent loss of price, and we think the owners can be safely relied upon to know when they want their stock unloaded in transit. We heartily indorse this bill, and think it should be put into effect.

The railroads are not prepared to unload the stock at any stated periods, and it frequently results that the stock has to be unloaded, say, every ten or twelve hours, to meet the necessities of the railroad,

on account of the absence of frequent unloading stations, while by the retention of the stock for a few hours longer in the cars it would avoid that unnecessary unloading.

I do not think there is any objection—I know there is not any objection—against this bill on the part of any practical live-stock man in the country. I am told there is an objection by certain humane societies. I dislike to question the experience or intelligence of these people, but I do not believe they understand the situation.

We heartily, thoroughly, indorse the bill of Mr. Stevens, and every live-stock organization of the country has favored it repeatedly, and I believe it ought to be enacted.

I thank you, gentlemen.

MR. MANN. I remember, if I remember correctly, that last year the president of the Chicago Humane Society sent a protest against the passage of a similar bill that was then pending, and I wish, if you will, that you might submit a written statement in reference to this bill which may be inserted in the record for our future consideration.

MR. TOMLINSON. I shall be very much pleased to do so.

I thank you very much, gentlemen, for your attention.

STATEMENT OF MR. WILLIAM H. CHADWICK, CHAIRMAN OF THE TRANSPORTATION COMMITTEE OF THE BOARD OF TRADE OF THE CITY OF CHICAGO.

MR. CHADWICK. With your permission, Mr. Chairman, I will read the instruction which I hold in my hand from the Board of Trade of Chicago:

BOARD OF TRADE OF THE CITY OF CHICAGO,
Chicago, April 9, 1902.

MR. WILLIAM H. CHADWICK,
Chairman Transportation Committee.

DEAR SIR: I have the honor to inform you that I have appointed you to represent the Board of Trade of the City of Chicago, at hearings in Washington, before the committees of the Senate and House on the subject of granting additional powers to the Interstate Commerce Commission.

While this association has indorsed the Nelson-Corlies bill, and you are to use your endeavors toward the passage of that bill, you are granted discretion to agree to such compromise as may be necessary in your judgment to secure the release sought.

Respectfully,

WILLIAM S. WARREN, *President.*

It seems to me that I may, in view of what has transpired in hearings of this committee since yesterday, draw your attention to the conditions which led to the enactment of the first act to regulate commerce.

I now quote from the proceedings of the National Board of Trade in Washington, December 15, 1897, the statement of Hon. George F. Stone, secretary of the board of trade in the city of Chicago, as follows:

The proposition to establish pooling is not by any means new, and we are therefore not left in doubt as to its effects upon the business interests of the country. The first prominent pool was the Chicago-Omaha, and was formed in 1870, and was found in its operation immensely profitable to railroads, so that in the year 1887 practically all competitive traffic was pooled. During those years business suffered, localities and shippers were discriminated against, secret rebates, to a greater extent than before or since were granted. Discrimination in favor of industries in which some of the parties to the pool were financially interested placed other industries under great and sometimes fatal disadvantages. One of the most mischievous and demoralizing pools that were established about this time was the Southwestern Railway Association, a vampire which for a decade sucked the lifeblood of the commerce of the Missouri Valley.

The Southwestern Railway Association solved the problem of how to get rid of competition and to rob the people within the letter of the law. Kansas City built a line to the South, and thought she had a line which could be used to fight this pool. It had not been in operation a year before this association, with subsidies, had it bound hand and foot. Another outlet to the East, by way of Omaha and Council Bluffs, was also shut up, leaving the Missouri River country absolutely at the mercy of the pooling lines. At every acquisition of competing lines rates were moved up a notch, until they reached an appalling figure. When this association was organized, in 1876, the rate on first-class matter between Missouri River Valley and Chicago was 50 cents.

It was at once advanced several cents, and in 1880 it had reached 75 cents on east bound and 85 cents on west bound. In a few months it was moved up to 90 cents. When the association was organized, it included the Burlington, Chicago and Alton, Missouri Pacific, Rock Island, and Wabash. The system was soon found incomplete in that there were several loopholes by which people were enabled to avoid the association's higher carriage.

One of these was the Missouri Pacific in Kansas. The business of ten points on the Gould system—Parsons, Chanute, Garnett, Ottawa, Humboldt, Fort Scott, Paola, Burlington, Emporia, and Junction City, since known as the ten junction points—was sent to St. Louis over Gould's southern line, avoiding the pool point. In order to divert this traffic through the pool, by which means alone the higher rates could be maintained, the association entered into an agreement to pay the Missouri Pacific a liberal percentage of the gross earnings of the pool on condition that this be sent via pool points. The amount paid the Missouri Pacific in 1885 on account of the ten junction points was \$660,000, the agreed percentage of the receipts of the association, which amounted to \$11,000,000.

During several years of the existence of this pool the shippers of the Missouri Valley had occasionally taken advantage of the rate offered by the Milwaukee and St. Paul Railroad to ship via Omaha and Council Bluffs. The pool, in order to prevent this, found it necessary to bind the Missouri Pacific and Council Bluffs Railroad from making special rates to Omaha and Council Bluffs. Here again a money plaster was applied, the pool agreeing to pay the two lines a percentage of the gross earnings, amounting to \$75,000 a year. The lines on their part charged the full local rates between the pool points and Omaha and Council Bluffs. The object of this was to make the rate via the Northern roads the same as that via the association or pool roads in order to keep all the business in the pool, as shippers would not use the Milwaukee or Northwestern at the same rate, owing to the great length of those lines.

The Burlington and Missouri River coming into competition with the Central Branch of the Union Pacific (a pool line), the association, in order to maintain rates and have the business pooled, subsidized the competing line to the amount of \$250,000 a year. The same principle was applied to the St. Louis, Fort Scott and Wichita after its extension into southern Kansas. The Fort Scott and Wichita, in consideration of the maintenance of rates and pooling business of its lines, received of the association a percentage of the gross earnings of the pool amounting to \$225,000 a year.

All the competitors who could be taken into the pools were thus brought in. The commissioner in the meantime turned his attention in other directions. Immediately upon the completion of the Kansas City, Springfield and Memphis, in 1883, the Fort Scott began to compete for the St. Louis business in conjunction with the St. Louis and San Francisco. By its connection with the latter at Springfield it was enabled to cut the association rate to St. Louis and still get a fair remuneration. In order to stop this, the association entered into an agreement with the Fort Scott and Frisco roads, by which the latter were paid \$8,000 a month on condition that they keep out of the St. Louis business. Such instances and similar combinations might be multiplied almost indefinitely, but sufficient is shown to indicate the nature of railway pools. They are inimical to the public interests.

They are in restraint of trade, they prevent competition, they are monopolistic in purpose and effect, they are odious in law, they are subversive of the very interests which railways were created to conserve—that is, the general welfare in so far as that welfare relates to the functions and obligations of a common carrier.

Now, this is a quotation from an article that was submitted in the year 1897, and it was well supported at that time, and has been since confirmed by history, as the history became public, and as the story was told more freely about the great success of those pools. After they were abolished, the men who were engaged in them and had

benefited by them had no further reasons for not letting the story come out publicly.

Year after year we plain people have been coming to committees of the Senate and House asking relief from conditions which are a disgrace to the Republic and which never should have been tolerated in this country. The people have long known and testified what the conditions have been, and their statements have had such full corroboration recently that their case is completely established beyond refutation. The Commission held that 23 cents was a reasonable rate from Chicago to New York. In 1892 the published rate was 29 cents. In 1889 the published rate was 13½ cents, and later 12 cents, from the Mississippi River to New York. That was caused by competition between carriers. That rate is to-day 18½ cents.

Now, we have here an instance that when the rate was 12 cents and was advanced to eighteen and a half cents the advance was greater than shown in the great pools to which I have referred, in which the advance was only 50 per cent, which seemed, at first sight, something that no traffic could bear and that no people, no committee, no Congress could indorse, and yet here is to-day, just instituted yesterday, a rate more than 50 per cent higher than the rate which had theretofore prevailed.

The CHAIRMAN. What did you say was the rate fixed by the Commission as a reasonable rate?

Mr. CHADWICK. That was long ago, many years ago.

The CHAIRMAN. In 1890?

Mr. CHADWICK. Yes, sir; in 1890.

The CHAIRMAN. What was that rate? I did not catch it.

Mr. CHADWICK. That rate was 23 cents.

Mr. MANN. Is the rate of eighteen and a half cents a reasonably high rate?

Mr. CHADWICK. If you will pardon me, Mr. Mann, I am not going to say anything about unreasonably high rates.

Mr. MANN. We have had the complaint made to us here that the grain rate was too low.

Mr. CHADWICK. Those men who say that may discuss it with you, if you please.

The higher rate has been made possible by the combination of lines between Chicago and the seaboard. The Pennsylvania has acquired the Baltimore and Ohio, the Norfolk and Western, the Chesapeake and Ohio, and lines north of the Pennsylvania have come mainly under control of the New York Central and Mr. Morgan.

A year ago the published rate on grain from Chicago to New York was reduced from 16 cents to 13½ cents. At the same time the railroads agreed to charge a secret rate of 11 cents. April 14, 1902, the published rate was advanced from 13 cents to 16 cents. This rate they must expect to maintain, for certain of the most important lines are under injunction to maintain the published rate. Apparently it is the intention to maintain a rate 5 cents higher this season than last season between Chicago and the seaboard.

When five or six men can sit down in New York and determine what the freight rate shall be from Kansas City to the Atlantic seaboard, from the Mississippi River to the Atlantic seaboard, and from the grainfields to St. Louis, Chicago, and Duluth, there is really no longer any competition in the transportation of grain, and that condition is practically here.

The Vanderbilt system, although not here in detail, the Pennsylvania system, as I term it one system, the Gould system, the Morgan-Hill system, and the Harriman system I have here.

These are the important independent systems which constitute in themselves—these five lines or five combinations—all the railroad lines in the country which it would be necessary to acquire to have absolute, complete control, and a monopoly of the railroads of the country. Those outside are the following:

The Atchison, Topeka and Santa Fe, with 7,481 miles; the Chicago, Rock Island and Pacific, with 3,818 miles; the St. Louis and San Francisco, with 2,887 miles; the Chicago, Milwaukee and St. Paul, with 6,451 miles, and the Illinois Central, with approximately 5,000 miles.

I will file all these papers with the committee, and you will see that the round figures which I assume of 100,000 miles now controlled by 5 men, the Vanderbilt line, comprising about 20,000 miles; the Pennsylvania system, with about 18,000 miles; the Gould system of about 16,000 miles; the Morgan-Hill system, including the Southern Railway, with about 37,000 miles, and the Harriman system, with about 16,000 miles, makes up this total, unless the Illinois Central was included in it, which I prefer not to include, in order not to obfuscate things too much:

| | Miles. |
|-------------------------------------------------------------------------|----------------|
| The Vanderbilt system | 20,000 |
| Pennsylvania system | 18,000 |
| Gould system | 16,000 |
| Morgan-Hill (including Southern Railway, controlled by Mr. Morgan) | 37,000 |
| Harriman system | 17,000 |
| Total | 108,000 |

IMPORTANT INDEPENDENT SYSTEMS.

| | |
|----------------------------------------|---------------|
| Atchison, Topeka and Santa Fe | 7,481 |
| Chicago, Rock Island and Pacific | 3,818 |
| St. Louis and San Francisco | 2,887 |
| Colorado and Southern | 1,142 |
| Chicago, Milwaukee and St. Paul | 6,461 |
| Pere Marquette | 1,747 |
| Atlantic Coast Line | 2,177 |
| Seaboard Air Line | 2,600 |
| Plant system | 2,207 |
| New York, New Haven and Hartford | 2,038 |
| Boston and Maine | 3,338 |
| Illinois Central | 5,000 |
| Total mileage | 40,896 |

VANDERBILT SYSTEM.

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| New York Central system (including the main line, the Beach Creek, the Fall Brook, the Mohawk and Malone, the New York and Harlem, the Roome, Watertown and Ogdensburg, the West Shore, and many others) . | 3,107 |
| Lake Shore and Michigan Southern | 2,084 |
| Michigan Central (including the Canadian Southern) | 1,635 |
| New York, Chicago and St. Louis (Nickel Plate, including the Pittsburg and Lake Erie) | 523 |
| Chicago and Northwestern (including the Chicago, St. Paul, Minneapolis and Omaha, and the Fremont, Elkhorn and Missouri Valley) | 8,769 |
| Cleveland, Cincinnati, Chicago and St. Louis (Big Four) | 2,287 |
| Boston and Albany | 394 |
| Lake Erie and Western | 725 |
| Total mileage | 19,524 |

PENNSYLVANIA SYSTEM.

| | Miles. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Pennsylvania Railroad (east of Pittsburg and Erie, including the New Jersey lines, the Allegheny Valley Railroad, the Philadelphia and Erie, the Northern Central, and many others) | 5,530 |
| Pennsylvania Railroad (west of Pittsburg and Erie, including the Pennsylvania Company, the Peoria and Western, the St. Louis, Vandalia and Terre Haute, the Pittsburg, Chicago, Cincinnati, and St. Louis, the Cleveland, Akron and Columbus, the Grand Rapids and Indiana, and others). .. | 4,405 |
| Long Island | 391 |
| Baltimore and Ohio (including the Cleveland, Lorain and Wheeling, the Baltimore and Ohio Southwestern, and others) | 4,025 |
| Total mileage | 14,351 |

GOULD SYSTEM.

| | |
|----------------------------------------------------------------------------------|--------|
| Controlled by the Gould-Sage interests: | |
| Missouri Pacific and Iron Mountain | 5,372 |
| International and Great Northern | 891 |
| Wabash (including the Wheeling and Lake Erie, and the Omaha and St. Louis) | 2,968 |
| St. Louis and Southwestern | 1,293 |
| Texas and Pacific | 1,619 |
| Rockefeller and Gould interests: | |
| Missouri, Kansas and Texas | 2,480 |
| Denver and Rio Grande (including the Rio Grande Western) | 2,301 |
| Total mileage | 16,924 |

MORGAN-HILL SYSTEM.

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Controlled jointly: | |
| Northern Pacific (which owns 23,000,000 acres of land) | 5,487 |
| Great Northern | 5,417 |
| Chicago, Burlington and Quincy | 8,171 |
| Erie | 2,605 |
| Lehigh Valley | 2,178 |
| Controlled by Mr. Morgan: | |
| Philadelphia and Reading (including the Central of New Jersey) | 1,677 |
| Hocking Valley (including the Toledo and Ohio Central, and the Kanawha and Michigan) | 882 |
| Chicago, Indianapolis and Louisville | 546 |
| Southern Railway (including the Central of Georgia, the Alabama, Great Southern, the Cincinnati, New Orleans and Texas Pacific, and the Mobile and Ohio) | 10,627 |
| Total mileage | 37,590 |

HARRIMAN SYSTEM.

| | |
|-----------------------------------------------------------------------------------------------------------------------------|--------|
| Union Pacific (including the Southern Pacific, the Oregon Railroad and Navigation Company, and the Oregon Short Line) | 15,163 |
| Chicago and Alton | 918 |
| Kansas City Southern | 873 |
| Total mileage | 16,954 |

While the powers of the judiciary should not be conferred on the Commission, it may safely be granted the right to arbitrate. We consider another provision absolutely essential to reasonably safeguard the interests of the public if this bill shall pass, namely, that as the Interstate Commerce Commission is composed of men who can have no personal interests in the matters brought before them under the provisions of this bill, the order of the Commission should stand

unless and until it be suspended or revoked by the circuit or other court or judge, as may be provided. The powers of the Commission are now simply advisory.

For the first ten years the Commission exercised the power of revising rates, which proved quite satisfactory to the country. The decisions of the Supreme Court, about 1897, terminated that power. The consequences have been most serious during the succeeding five years. Of about 135 orders made by the Commission, I think that 68 of them dealt with unjust and unreasonable rates, and for the correction of such wrongs I have not been able to learn of a single instance where the remedy sought has been obtained.

If bill 8337 is to become substantially the law, we earnestly hope and recommend that it be amended so that any definite order made by the Commission, and provided in the bill as printed, shall be reviewable by but one particularly designated court of the United States, which shall have jurisdiction in all parts of the United States and Territories, or shall be reviewable by one particularly designated judge of some court of the United States, who shall have the same jurisdiction, for the reviewing and passing on such orders, so that all causes which shall be heard under the act may have the benefit of expert service of the highest order.

The railroads ask for protection against each other. Are they not willing that the public be granted a similar protection against the railroads themselves? Why not? My personal experience with railroad managers has led me to believe that individually they are the peers of any class in the Republic. Why should they collectively take any different course than each would pursue of his own volition individually? I am not willing to concede that the tariff rates of freight on grain of late have been or now are too high, nor do I complain that the different railroads, even in this period of commercial activity and admitted prosperity, are collecting more pay for their services than honestly may be defended as fair and reasonable; for surely profits may be had more easily and paid with better grace in prosperous than in pinching times.

A crying and annoying evil, which works hardship in many cases and seems to be indefensible, is the irregular, heterogeneous classification of freight, and in this day of organization and method it seems strange that it has not heretofore been regulated.

Whenever any bill is passed, it should provide protection for the carriers and the public by making it a misdemeanor, punishable by an exemplary fine, for any person acting as principal or otherwise to obtain transportation at less than tariff by misrepresentation of classification, weight, character, or any other fraudulent means.

As stability of rates, when fair, is a great desideratum, the orders of the Interstate Commerce Commission should be continued in force and obeyed for two years from the time they become originally operative and observed. The people are here again with a bill—those same people who have been here time and again—seeking relief of evils which are now undenied and undeniable. It may seem strange that they continue to come again and again, but, as you well know, they have no hope save in you, you who stand morally pledged to do the fair thing, the reasonable, the proper, the possible thing; the thing that is right for the whole community of interests—trade, producer, consumer, shippers, carriers.

I now wish to say a word on recent conditions in the Southwest. Evidence was recently made public showing the following state of affairs: That Richardson, of Chicago, operating grain elevators and doing a grain business on the Santa Fe system, and Robinson, of Kansas City, operating in grain on the Missouri system, partially in the same territory, each received from their respective railroads a private, and to all intents and purposes a secret, rebate of 5 cents per hundred, and that the Santa Fe authorized and employed the register of concerns to purchase the grain at certain stations, paying to them a stipulated brokerage for handling the grain for the account of the Santa Fe, which thus departed from its proper functions as a common carrier, and thereby, instead of performing its duty as a servant of the public, became the competitor of those legitimately so trading, engrossing their business.

This seems to me one of the most flagrant of all the numerous instances of wrongdoing on the part of the railroad fraternity which has come to my attention.

It is of little use to bring to your notice any facts whatever, unless this one case makes upon you the impression that it should. Your honorable chairman asked yesterday that some facts be laid before this committee in lieu of argument, and I therefore take an early opportunity to apprise you of this one fact, which, it seems to me, unless promptly checked by legislation which will check, foreshadows practices by the common carriers which can not fail to produce the most deplorable results. What will happen if the railroads go on and engross the business of the iron dealer, the coal dealer, the lumber dealer, and so on, as they, in the instance cited, have treated the grain men in the territory named? Anarchy is the answer.

In support of what I have said here I will say that this evidence was taken by the Interstate Commerce Commission in public hearing at St. Louis, Chicago, and Kansas City, within the past few months, and can be learned from their reports or their notes.

Devices for evading the interstate-commerce law have been abundant in the past, and as fast as one is uncovered and corrected, wholly or in part, a new device has been found, and who can say when and where the end will be? Probably you, each of you, know more than I do of this question of the regulation of common carriers, and I do not doubt that you know that the abuses of this ought to be evaded, and that we ought to obtain from you at the earliest possible day a full measure of relief from discrimination. I am not prepared to indorse any proposition to confer upon any commission whatever the power to primarily institute and make "just and reasonable rates."

It seems to me, however, that it is entirely proper and right that the Commission may examine into all the conditions surrounding, pertaining to, affecting, or affected by any rates or practices which may be established by carriers, and if after a full hearing the Commission finds grounds on which they consider an order justifiable, then, as arbitrators, the order of the Commission should stand until or unless revoked by the court of review, for the making of a rate or the practice by the railroads is necessarily in the first instance *ex parte* and should not stand, unless confirmed by the arbitrator, the Commission. Relief from the evils of discrimination of every kind and degree, relief from the evils of unreasonably high rates, and to secure the benefits

of uniform rates are what we intend to seek through the Nelson-Corliss bill.

This is our charter to-day, and we think that the bill will accomplish the end sought, but if it will not accomplish that, show us how to amend it, so that justice may be done the public and the railroads alike, and you will confer an inestimable boon on millions who are affected by the matters under discussion.

I have the honor to represent before you the most important commercial organization in the world; an organization comprised of business men, merchants in and about Chicago, and in all parts of the country, and also in those countries which are in close commercial touch with the United States. The vessel and the railroad interests are strongly represented in our membership, as well as all the important banks and kindred interests. We are in close touch with all the agricultural interests of the continent, and may fairly claim to know and reflect the crying needs of the people, and this we intend to do, and believe we are now doing.

Year in and year out, for more than—think of the time the country has suffered—more than thirty years, for the Chicago-Omaha pool was formed in 1870, and was grinding on like the car of Juggernaut in full vigor thirty years ago. The public has carried this old man of the sea on its shoulders through a generation. This is no dream, for the vast volume of evidence given before the committees of Congress, before the Commission, before the courts, is perhaps so small in proportion to the amount that would be forthcoming should every man tell what he knew about railroad discrimination, as to constitute but an insignificant per cent of the whole, but yet what a mass of testimony has been printed upon these subjects.

Our prayer is before you. You are the only people who can assist us at this stage of the proceedings; you are the people on whom rests the responsibility for withholding from the people their rights and granting to the railroads the privileges which they deserve to enjoy. Few, if any, will complain that the people have not done their duty fully.

Of the bills proposed, of the three or four which have been introduced, we indorse the Corliss bill. We have been in hopes that some action would be taken by which the members of the Interstate Commerce Commission would not be left dependent upon the fortune of political parties. Give us the best courts possible, give Congress a fair bill, practically what the railroads honestly know they need, and what the public has a right to regard as reasonable safeguards.

I have not anything further to say, Mr. Chairman, but I am ready to answer any questions I can answer, and those that I can not answer at present without having additional information or without giving the matter particular thought I will not try to answer. I will be here in town a day or two, and if you choose to hear me again I will try to answer them then.

STATEMENT OF MR. CHARLES NOYES CHADWICK.

Mr. CHADWICK. Mr. Chairman, I want just one word. I represent the Manufacturers' Association of New York. The Manufacturers' Association of New York, Mr. Chairman, is a representative body of a very large number of industries, as you are aware. We have regu-

lar monthly hearings, and all matters of importance that relate to the interest of the country come to our organization through its committee.

This bill which is before you was referred to the committee on legislation and reported favorably to the Manufacturers' Association, and by a unanimous vote was approved, and I was appointed as a delegate from that organization to appear before you in the interests of that bill.

I do not think it is necessary for me to enter into any argument in favor of it. All possible arguments have been presented to you here this morning very fully, and I presume that you have heard them before, and it is simply in the interest of common sense and fair dealing, it seems to us, that this bill should be passed. We feel that there should be some organization with power, not an advisory board, but an organization with power, to give immediate relief when the necessity arises.

The delay arising from litigation, as you know, covers a period of sometimes a number of years. Conditions change, and it is very necessary that when a particular condition arises it should be met at that time, and in the interest of the community at large should be adjudicated upon; and if the body, the organization which has this power, fails or does wrongly, as we understand under the provisions of this bill, the remedy is had through the court.

The bill seems to us eminently fair. It is to the interest of every person in the community. We feel that all should be treated alike—the small town, the large town; the small dealer, the large dealer. In our business interests, which spread all over the United States, we have come into contact time and time again with great injustices.

We feel that this bill will meet those injustices and, so far as it is possible within the limits of human nature, settle them satisfactorily and wisely and intelligently.

I do not know that I need to say anything further except to inform you, as I have, that that is the feeling of our organization and that we hope the bill will pass.

The CHAIRMAN. We can give you more time to-morrow, if you so desire.

Mr. CHADWICK. Thank you.

Thereupon the committee adjourned until to-morrow, April 16, 1902, at 10.30 o'clock a. m.

WASHINGTON, D. C., *April 16, 1902.*

STATEMENT OF MR. C. N. CHADWICK, OF NEW YORK—Continued.

Mr. CHADWICK. Mr. Chairman and gentlemen of the committee, this bill appeals to our organization for the reason that it seems an intent to perfect the original measure which was intended to clothe the Interstate Commerce Commission with mandatory powers. As we understand it, the decision of the Supreme Court of the United States found that the law was not far-reaching in that direction, and this amendment seems to me to be intended to cover the defects of the law.

It would seem to me that if a commission is to be of any benefit whatever, it should have a certain amount of power. A commission

which is advisory in its character, and which is supposed to regulate such vast interests as the interstate commerce of the United States, should not be limited, and we have felt that for that reason it was very wise to amend the law.

In Brooklyn we have had some bitter experiences in regard to transportation. We have in that city a rapid transit company controlling the entire service of the city, having a population of over 1,000,000 and that, in connection with the congestion upon the bridge, has developed in the borough of Brooklyn a committee of 50, which has endeavored for the last two years, as far as possible, to regulate the bad conditions existing there. We have an advisory commission, but it has no power whatever, and we have a bridge commissioner, and we have had him appear before us and before the city authorities for the last two years. We have been working along that line, but have accomplished nothing. The conditions there are intolerable.

In the development of the resources of the country there come times when capital will be invested in certain localities and vested interests will be developed. People will gather together in places for the purpose, perhaps, of operating factories, and flourishing villages may be constructed, depending, of course, upon the transportation facilities that are afforded for the incoming and outgoing products of such factories. Then a time comes when, for reasons that appeal to the railroads, a change is made. Trains are taken off and other things are done to injure such a village, and it has practically no redress. Of course we can, as has been stated, go to the courts and ask for relief; but that takes time, and this relief is sought to cure conditions which exist now. That seems to me to be vital. It is a relief which gives damage for injury done for the time being, but it does not provide for continuous relief.

This Interstate Commerce Commission was organized for the purpose of changing the conditions which have arisen, after having investigated the subject thoroughly and having the evidence before it, and to thus be enabled to provide relief which shall be continuous and upon which all can depend. It seems to me that that is the vital point in the whole thing. Of course we will have the right to bring suit against individuals, and in such cases we can get certain relief, but it is a relief in dollars and cents for past damages. The vital point is to get justice and have fair play for all parties interested, in order that we can depend upon certain conditions and have those conditions remain practically unchanged.

We have on our rivers large boats and small boats, schooners and sailboats, and they have a right of way. There is an opportunity for each boat to avail itself of the use of that river and to know what it can depend upon. A common carrier should be placed in that category, and we who have been coming before this committee for so long feel that we ought to have a regular and fair rate of service on the railroads and that there should be no discrimination in favor of one party against the other. That, it seems to me, is the vital point in this matter; and for that reason we feel that it would be but common sense, fair and equitable, that we should have it.

Mr. RICHARDSON. Is it not a fact that the main complaint you have against the railroads is the matter of injustice on rebates?

Mr. CHADWICK. That is one of them.

Mr. RICHARDSON. Is it not true that that is the principal discrimination that is made?

Mr. CHADWICK. That is one of them, and it may be that the major complaints come from that cause.

Mr. RICHARDSON. That being secret, are you going to reach that by law?

Mr. CHADWICK. If you have an organization with power to enact penalties, you are in a better position to reach them.

Mr. RICHARDSON. And why?

Mr. CHADWICK. You will have to depend upon the general situation and the character of the men; their intelligence, ability, etc. You are always working against the limitations of human nature; and the main point is to secure that particular measure which will under all the circumstances give the best result. I do not think that even this measure will be an entire cure for all our troubles, because we all have a desire for riches, and we have favoritism to contend with.

The CHAIRMAN. Have you given any thought to the effect that it might have on the future construction of railroads? Would you go into the business of putting large amounts of capital into them when you knew that there was a commission whose action might be detrimental to them, and which might arbitrarily say whether or not they should be profitable?

Mr. CHADWICK. I think so. I think we invest in bad bank stocks and a number of things where we depend upon the good sense and ability of the directors.

The CHAIRMAN. Those are parties in interest. They are identical with you.

Mr. CHADWICK. That is true.

The CHAIRMAN. Would you be willing to establish a private business which would be subject to the arbitrary decision of a commission?

Mr. CHADWICK. We have done that already in our courts. They have no interest whatever in our affairs; and men do not hesitate to enter into all sorts of business engagements knowing that many of them will be subjected to the adjudication of the courts.

The CHAIRMAN. That is true; but you have the power to go to the court of last resort, and to have complete investigation, and no judgment is made effective until after trial is had.

Mr. CHADWICK. Is not that provision in this bill?

Mr. RICHARDSON. No, no.

The CHAIRMAN. No. Under the terms of this bill, the judgment would go into effect while the trial is going on.

Mr. CHADWICK. Yes; but there would be appeal to the circuit court.

The CHAIRMAN. But in the meantime the judgment is going to be executed.

Mr. CHADWICK. That is only temporary. We have that condition now. If I engage a carpenter to do work on my house and through forgetfulness or neglect or for any other reason I fail to meet his bill when it becomes due he can get a lien upon my property.

Mr. DAVIS. But you can suspend that judgment by going into court.

Mr. CHADWICK. But I have got to fight it.

Mr. ADAMSON. Would you put the power into the law to say what that carpenter should charge you?

Mr. CHADWICK. I think the conditions are a little different in the two cases.

The CHAIRMAN. We will be glad to hear you upon that point.

Mr. CHADWICK. What I am saying are simply the points which come to my mind. The only thing that I would like to say upon that point is that it seems to me a common carrier is different from a man who is engaged in the ordinary business affairs of life. The common carrier has had conferred upon it certain peculiar rights. In New York we have given certain corporations franchises which give those corporations opportunities to earn immense sums of money, and we have been making an effort, which finally culminated in law, that those franchises should be taxed. That is right along this line, and I contend that the common carrier is contradistinguished from a man in ordinary business affairs. I do not know that that is true, and I do not know how it may strike you, but it is the best answer I can give you.

Mr. RICHARDSON. Your idea is that the railroad is performing a governmental service?

Mr. CHADWICK. Yes. More than that, it is performing a special function for the public.

Mr. RICHARDSON. And you think it ought to be held up to some standard for such service, just as if the Government were rendering the service?

Mr. CHADWICK. Substantially. Their situation is a peculiar one, and it is different from the ordinary business. That is a point which it seems to me is important.

STATEMENT OF MR. DAVID BINGHAM, CHAIRMAN OF THE DISCRIMINATION COMMITTEE OF THE NEW YORK PRODUCE EXCHANGE.

Mr. BINGHAM. Mr. Chairman and gentlemen of the committee, the chairman of our produce exchange has just come out of a fight before the New York legislature, which affects us a little more than the Interstate Commerce Commission does, because the great bulk of our grain comes from Buffalo. New York State has grown by reason of the building of the Erie Canal, and if it is to retain its supremacy it will be by the enlargement of that canal and not by appealing to the legislature, as we think, because the rapacity of the railroads will all the time crowd us in regard to rates so that we can not live.

I am specially charged to present this memorial to this committee, and as it is quite short, I will read it:

The provisions of these bills are identical, and their object is to confer upon the Interstate Commerce Commission powers which will make operative the interstate-commerce act as originally enacted by Congress and to make effective the orders of the Commission for the correction of abuses which exist in interstate commerce, especially unjust discrimination against individuals, firms, corporations, and localities. The phraseology of the original interstate-commerce act, as interpreted by the Supreme Court of the United States in various decisions, has been found insufficient to give effect to its purpose.

Under the act as it now exists the orders of the Commission can only be rendered effective by a judgment of the United States courts, and when application for such judgment is made the findings and decisions of the Commission are *prima facie* only and the railroad companies have the right to offer testimony *de novo* upon the subject. The result of this condition of the law is that important evidence is often withheld from the Commission and reserved to be offered for the first time in court. The pending amendments provide a carefully drawn remedy, which gives effect to the administrative orders of the Commission while securing to the defendants the right of appeal to the United States circuit court and the Supreme Court. The bill provides that the orders of the Commission shall be reviewed upon the evidence upon

which the Commission acted, except that in certain circumstances additional evidence may be taken, but this right is so guarded as to prevent its becoming an abuse.

These amendments do not confer upon the Commission any general rate-making power; this power is still left with the common carriers. The pending bills seek to give the Commission power to correct rates when they have been shown by judicial investigation to be unreasonable, unlawful, or discriminative, the orders of the Commission to be obligatory only for a period of two years.

As a substitute for the imprisonment penalties of the existing act, fines are prescribed varying from \$1,000 to \$20,000, with the view of facilitating the production of evidence and the more effective enforcement of the penal provisions of the act.

That, in substance, is all the Produce Exchange desires specially to present to this committee. As you know, in New York, as I said before, we get a very large amount of our produce by water. What we get by rail comes very largely from Buffalo, and there we have what is known as the Trunk Line Association. The Trunk Line Association, gentlemen, get together and they apportion the amount of traffic each railroad is allowed to carry from Buffalo to New York. For example, they say the Lackawanna Road will carry 6½ per cent; the Lehigh Valley Railroad will carry, say, 15 per cent; the New York Central Railroad so much, and so they divide it all out. When a railroad reaches its percentage it has got to stop and carry no more until some railroad which is behind has caught up.

For example, along in November, just a little while before the closing of the canal, a friend of mine had some indian corn in Buffalo. He wanted to bring it down to New York. The agent of the Trunk Line Association said to him: "You must bring that over the New York Central Railroad." He went to the New York Central and he said: "Can we have cars to move that corn?" They said: "Yes; but it will be two or three weeks before we can give them to you." He said: "I want to move it for a steamer going in November." "Well," said the New York Central man, "You will have to take your chance." He went to the Lehigh Valley Railroad; he asked them whether they had any cars. "Yes," they replied, "We have plenty of cars." "Will you take that grain?" said my friend. "We can not, unless you get permission from the association."

He could not get permission from the association to allow the Lehigh Valley Railroad to carry that grain, although that railroad had the cars. The New York Central Railroad was playing the dog in the manger, and the result of it was that he had to get that grain brought by canal and take the chances of its arriving in time.

Those are the conditions which we find to be almost intolerable.

The CHAIRMAN. Would not that be a subject for regulation by the legislature of New York? Both points—the point of shipment and the point of destination—were in New York in that case.

Mr. BINGHAM. That is why we went to the State of New York, Mr. Chairman; but the fact being that the railroads from Buffalo to New York, with one exception, pass through New Jersey, the Interstate Commerce Commission claim that this is interstate commerce. In New York they claim it is not interstate commerce when it suits them, and in most cases it suits them that way. They say, "We will not file our tariffs," and I believe they do not file them. But make an arrangement with the New York Central for grain from Buffalo to New York. They may send it by the Central. In that case it is New York State traffic. But if they send it by the Western route, then is interstate traffic, as it suits them.

Those are the conditions under which we are seeking to get a remedy. We do not think ourselves that if this bill is passed we will have the commercial millennium right away, and we do not think if it is defeated the United States is going to the dogs at once, but we think it would afford a substantial relief to have it passed. We have not, either, the same great objection to what is known as pooling that has been developed before this committee. We think that some arrangement might fairly be reached which would permit the railroads to go into some kind of an agreement to regulate rates. You heard yesterday that five men—they are not Chicago men, by the way, but New York men—control practically all the railroads in the United States. As those railroads are consolidated into large companies you can readily understand that this question of individual discriminations will rapidly be eliminated.

Competition is all very well where this little railroad is run in competition with that little railroad and the competition exists largely by giving rebates; but destroy that competition and the little man who was a very important man in the little railroad ceases to have the importance in the big combination. The Senator from Rhode Island is a very big man in Rhode Island, but spread him over the United States and he is very thin. This man down here who now gets these favors from the little railroad when it is absorbed in the big railroad won't be able to get them.

Mr. RICHARDSON. The combination, then, is the manner in which you reach the trouble of rebate?

Mr. BINGHAM. As between individuals, we think.

Mr. RICHARDSON. Individual rebates?

The CHAIRMAN. In your judgment that would obliterate discriminations as to localities as well as individuals?

Mr. BINGHAM. No, sir; that is as to individuals. New York does not come now with any particular complaint of discriminations against individuals. We are treated pretty much alike there, because the railroads are pretty large corporations and nobody has got the pull. It is the pull everywhere that brings the rebate. A man who has a pull goes to a small railroad. He gets a pass and gets all sorts of favors. But when it comes to a large combination, such as the Pennsylvania Railroad Company, I do not think anyone would charge the Pennsylvania Railroad Company with discriminating in favor of individuals.

We complain, of course, as to discriminations as regard localities. That has been our fight before the New York State legislature. And, by the way, it may be a matter of interest to this committee to know that the bill which we introduced into the New York legislature contains certain provisions, and that with one exception every provision that we asked for in that bill was granted to us by the Trunk Line Association. They conceded all our requests, so that as it stands to-day these arrangements with the railroad are very fair. But we would like to have that fixed. You do not know when they will go back on you.

Every country in the world, including this one, has found it necessary for the supreme power to regulate railways—extending from Austria, which owns its railroads, to Great Britain, which simply uses some regulation. The principle for which we are contending to-day is one for which we contended for ten years, and which brought the original interstate-commerce law. When we got that law and got that

Commission we thought that we got everything we wanted. It has taken us fifteen years to find out that we got nothing. The railroads have found a hole in this law through which they can drive their coach and four. We find it is of no practical benefit to us. The New York Produce Exchange has spent about \$10,000 to have the Interstate Commerce Commission investigate a case.

We would not spend 7,000 cents now to bring any complaint before them; it would not be of any use. They have no authority to enforce their decisions. That is the weak point of the law. What is the use of giving a commission power to investigate and then not give it any power to enforce?

Mr. RICHARDSON. You make the Commission, then, supreme and arbitrary, give it an arbitrary power to render a judgment at once?

Mr. BINGHAM. Yes.

Mr. RICHARDSON. And enforce it?

Mr. BINGHAM. Yes.

Mr. RICHARDSON. And then afterwards try the case in the higher court?

Mr. BINGHAM. Yes, sir. Then we put the railroad companies in this position; that they will have to do the running before this body.

Mr. RICHARDSON. What would be your remedy? Suppose the Commission were to fix the rate and require the railroad people to pay that rate; the railroad has to take the appeal to the circuit court. Suppose the circuit court decides against the railroad and sustains the decision of the Commission. Then the railroad takes it up to the last court, the Supreme Court of the United States, and the Supreme Court holds that the judgment of the Commission was wrong, and that you have been imposing a burden on the railroads during those two years, that you have been unjust and unfair to the railroads, and that they have been losing a large amount of money thereby. What would be the remedy for the railroad?

Mr. BINGHAM. Then the railroads would be getting some of their own medicine. They would be suffering the loss which we now have to suffer. They would have the remedy which we now have. The only remedy which we have is to appeal to you.

Mr. MANN. You want to shift the burden on the other shoulder?

Mr. BINGHAM. Yes.

Mr. MANN. Put the burden on somebody else's shoulder?

Mr. BINGHAM. We have been paying for years too much. I will illustrate the point.

Mr. COOMBS. You want to get back some of your money by that?

Mr. BINGHAM. We can not get back our money.

Mr. RICHARDSON. One wrong does not justify another, not according to morals?

Mr. BINGHAM. Sometimes it does. If a man hits me in the street, I will be apt to knock him down. We are tired of being too easy with the railroads. We have spent some twenty years, more or less, fighting these railroads, and they walk over us unless we threaten them with the legislature. It is the only body they care anything about—the only body that they fear. Let me give you an illustration. We have a State commerce commission in New York State—a board of railroad commissioners. Twenty years ago, more or less, we made a complaint to them in regard to the charge there for spouting grain from an elevator into a ship alongside. It exists to-day, by the way.

If I send to the railroad company and say I want that grain taken out of that elevator and send my ship alongside, they will put it into a lighter and tow it alongside my ship and charge me nothing; but if I say, "I will save you that lighterage," that I will send up my ship and put it alongside of that elevator, then they charge a cent a bushel. What is that for? That is clear plunder. One year, twenty years ago, the New York Central elevator loaded 270 ships, and from that day to this they have only loaded one ship, because they put that 1 cent a bushel on to prevent the loading of ships at their elevators. Our railroad commission recommended—and they have the same power as the Interstate Commerce Commission—that that charge be taken off. That is all that ever came of it. It is there and will stay there until somebody has some greater power than simply to recommend.

The CHAIRMAN. What are the charges? What does it cost now to take a bushel of wheat that goes down on the New York Central road from the vicinity of Harlem River and put it on board of an outgoing steamer? I have heard it said, and have heard it said in this room here by a New York witness, that it costs 3 cents a bushel to pass the water front of New York.

Mr. BINGHAM. The charge is three-quarters of a cent a bushel.

The CHAIRMAN. These gentlemen made this charge before this committee—that the New York Central had a rate of \$20 a car from Buffalo to New York; that \$2 of that went to the railroad company and \$18 of it went to some transportation company, some scow company.

Mr. BINGHAM. Lighterage company.

The CHAIRMAN. A lighterage company; \$18 went to that company for transporting it across the water front of New York.

Mr. BINGHAM. I give that up. I never heard of an arrangement of that kind. I am fairly familiar with the arrangements in New York and I can tell you about that; these hypothetical arrangements I do not know about.

The CHAIRMAN. I think he did not regard that as hypothetical.

Mr. BINGHAM. The elevating charge in New York is three-quarters of a cent; that is, it is a cent and an eighth, and they rebate three-eighths. Why they do it that way of course I am not here to defend. All the grain coming from the West to New York is subject to a charge when they come to divide up among the various railroads, in the first instance of 3 cents a hundred for lighterage.

The CHAIRMAN. Was that 3 cents a hundred or 3 cents a bushel? It was probably 3 cents a hundred.

Mr. BINGHAM. I think that is probably what you are thinking about. That is a question between the railroads. If the rate west of the Mississippi River to New York was 27 cents before the carriage is prorated, they will take off 3 cents a hundred at that rate for the terminal charges in New York. Then they will prorate the balance. That 3 cents goes to the railroad company that does this lighterage business, and that charge of a cent a bushel from the elevator I speak of is charged because they wish to retain that 3 cents a hundred. If I should send my vessel up to the elevator, you could see they would not spend a fraction of that 3 cents. They would save that entire amount; but if they did that the western road would want to add it on to the rate of freight they got. That is the 3 cents I think the gentlemen referred to. That is between the railroads; that does not effect the merchants.

Mr. CORLISS. Will you state what the lighterage charges are in New York on a carload of grain from Buffalo to any point beyond New York going through New York?

Mr. BINGHAM. There are two items. The lighterage charge is a half cent a bushel. The elevator charge is three-fourths of a cent. The lighterage charge is distinct entirely from an elevator charge. A lighter simply takes the grain from the rail or store to the steamer or whatever the destination is. That charge is half a cent a bushel, on which they pay shortage. They guarantee the weight.

Mr. CORLISS. Is it not true that in all carload lots that enter New York they have to pay a lighterage charge of about \$18 a car?

Mr. BINGHAM. Who has to pay that?

Mr. CORLISS. Either the consignee or consignor.

Mr. BINGHAM. No; we do not pay any charge. That charge is a charge which is adjusted between the railroads. We bring our grain there, and we pay a flat rate, such and such freight, and it comes with a bill of lading to New York, and that bill of lading provides for free lighterage; that is, the grain is to be delivered free alongside the outgoing ship.

A BYSTANDER. It is \$18.

Mr. BINGHAM. But we do not pay that; we have no charge to pay after we make the contract.

Mr. CORLISS. Is it not true that there is a charge on all such shipments for lighterage fees, an average of \$16 to \$18 a car, that somebody pays?

Mr. BINGHAM. The Western road pays its share of it, that is all.

Mr. CORLISS. Do you know what the lighterage charge on a carload of produce going into New York is?

Mr. BINGHAM. I have stated what the lighterage charge is where it is lightered independently. That 3 cents a hundred is known as a terminal charge.

Mr. CORLISS. Does that include lighterage?

Mr. BINGHAM. Yes; but not elevating.

Mr. MANN. You mean the division between the railroad companies is taken out and the rest is the freight divided between the two or three lines that run through; that is, on the Michigan Central and the New York Central there would be the division of the balance of freight between those roads.

Mr. BINGHAM. Precisely. The first charge is 3 cents a hundred, which is practically clean profit to the New York road.

Mr. MANN. That is retained by the New York roads?

Mr. BINGHAM. Yes, sir.

Mr. CORLISS. Does the New York Central, for instance, if it is brought over the New York Central, get that 3 cents a hundred, or does it go to the lighterage company?

Mr. BINGHAM. It goes to the New York Central Railroad Company now. The railroads now, practically all of them, I think, own their own lighterage companies. In olden times, when I was first acquainted with the trade, the lighterage company was a wheel within a wheel. They had the fast-freight lines. These lighterage companies were companies formed by the directors in nice little places where surplus profits could be put, and they made favorable contracts with the railroad, the same as the fast-freight lines, but now the railroads run the whole machine.

Mr. MANN. What is the actual cost of lighterage?

Mr. BINGHAM. I stated half a cent a bushel.

Mr. MANN. I do not mean the charge; I mean the actual cost. Where they figure on 3 cents a hundred to the consignor what is the actual cost to the railroads?

Mr. BINGHAM. About three-eighths of a cent a bushel.

Mr. MANN. So, if they only charge the actual cost of lighterage it would reduce the freight rate on grain from Chicago to New York, or from any other points, that much?

Mr. BINGHAM. Yes, sir.

Mr. MANN. It would make a reduction of over 2 cents a hundred.

Mr. BINGHAM. Yes, sir.

The CHAIRMAN. Let me see if I have a correct understanding of what I think you said. There is a lighterage charge of half a cent in New York; there is an elevator charge of three-quarters of a cent; that is a cent and a quarter. Now, does all the grain going east—going through New York—that is lightered have to pay that charge?

Mr. BINGHAM. Practically; yes, sir.

The CHAIRMAN. Is there any other charge of any kind that is local in its character?

Mr. BINGHAM. Only some very slight charge. There is an inspection charge.

The CHAIRMAN. What is that?

Mr. BINGHAM. That is a charge of about 25 cents a car for inspecting the grain and saying what grade it is.

The CHAIRMAN. Give me as nearly as you can the cost to the Western shipper of getting a bushel of grain through New York. We have it now up to a cent and a quarter a hundred, besides these minor charges. Now, can you aggregate them, so we can get some idea of what it costs the producer of that grain to get it through New York City?

Mr. BINGHAM. Yes.

The CHAIRMAN. What is it?

Mr. BINGHAM. The railroad company owns its own lighters and it owns its own steamboats, and that lighterage which you are speaking of is included in the freight charge, for which I say it is 3 cents a hundred. That will not cost the railroad company much over a quarter of a cent a bushel. You might say three-eighths of a cent a bushel. Then the charge of taking it from the barge and putting it on board the steamer is three-quarters of a cent a bushel. That is the charge of the steamer for taking it on board. It costs the steamer \$2 a thousand bushels to take it when it is spouted in through the steamer and shoved back. I suppose you would hardly want to include that.

The CHAIRMAN. You know better than I what would be included in this cost. What I want to get at is the cost to the people of the West.

Mr. BINGHAM. I think we had better exclude that, because that is simply stowing their ships. If you put cotton aboard you have to have men shove it into the wings and so on, and wheat has to be treated the same way. That charge it is hardly fair to say the grain incurs. Then the total charge for grain is not to exceed a cent and a quarter a bushel. If your western shippers want to make a contract at a cent and a quarter a bushel for a year I can complete it for them, lighterage and all.

The CHAIRMAN. Then that is about the cost of the regular shipments from Chicago to Buffalo?

Mr. BINGHAM. That varies according to the demand. That is about as low as it ever goes down. The general rate of freight from Chicago to Buffalo is about one cent and a half to two and one-half, I think. The Buffalo charge is half a cent a bushel, to take it out of the lake vessel and put it on board of the cars, which charge—

The CHAIRMAN. Are wheat and corn ever sent from your port to European ports as ballast?

Mr. BINGHAM. Well, I have heard that question over and over again.

The CHAIRMAN. I mean without charge or with a mere nominal ocean charge?

Mr. BINGHAM. It has been done. I have been paid to ship grain. I have been paid to put grain on board ship and send it across the ocean because the vessel needed ballast. I have seen grain taken over and brought back again because it was cheaper to bring it back than to take it out. But modern steamships are built with water ballast, and they are independent of this ballast question. But within a few months perhaps you have seen that the steamship lines have combined, decided that they would not carry any grain across the ocean for less than 3 cents a bushel, and we are working under that combination now. Everything is combination. Railroads are combining and the steamship men are combining, and I do not know who is going to combine next.

Mr. RICHARDSON. Does the lighterage charge depend upon the manner in which you make the bill out? Is not the lighterage excluded if you bill it in a certain way?

Mr. BINGHAM. Everything comes to New York now lighterage free—that is, the charge is in the freight.

A BYSTANDER. The charge includes delivery at any point in the harbor.

Mr. BINGHAM. That is the ordinary way of making the contract; and so a rate given by the railroad from Buffalo to New York would include half a cent a bushel paid to the elevator in Buffalo; the railroad would pay that to one of the elevators which is in the combination. There is a combination up there of elevators.

Mr. ADAMSON. You represent a combination yourself, I believe you say?

Mr. BINGHAM. No; I was a director in the International Elevating Company, but they put me out.

Mr. ADAMSON. What did you say you represent?

Mr. BINGHAM. The New York Produce Exchange.

Mr. ADAMSON. That is an association?

Mr. BINGHAM. Yes; it is an association.

Mr. ADAMSON. I suppose the object of it is to promote the interests of the people who go into it?

Mr. BINGHAM. We are not in business altogether for our health.

Mr. MANN. You limit your membership?

Mr. BINGHAM. Our membership is limited to 3,000, and our memberships were selling down about \$75, because we have a great many too many members. The exchange is now engaged in buying up the surplus members to get less of them. Chicago has a membership of 1,800, and their membership is worth \$4,500. I am a member of it.

Mr. ADAMSON. You would not object to combination so much if your crowd could always keep ahead, I suppose?

Mr. BINGHAM. Oh, no; we are only opposed to combinations when we are not in them. [Laughter.]

Mr. CORLISS. That is the prevailing spirit of New York City?

Mr. BINGHAM. Yes, sir.

Mr. MANN. You spoke of the matter of pooling a while ago, and said you had no great objection to that. Let me ask you this question: If the law would be amended so that the Interstate Commerce Commission or the courts might decide speedily what is a reasonable freight rate, what would be the objection then to permitting the railroad companies to pool?

Mr. BINGHAM. None that I know of. I have in my hand here a proposition which I do not bring out officially, but which we at any rate think would be a perfectly fair one. We think the railroads would accept this proposition. We would be willing to accept it. We do not want to harass the railroads, because we require their services. We do not want them to harass us.

Now, if you do not mind, I will read this without recommending it, simply reading it as a suggestion. It runs this way:

Carriers subject to the provisions of this act, with respect to traffic subject to the act, may form associations to secure the establishment and maintenance of just, reasonable, nonpreferential, uniform, and stable rates, and for the promulgation and enforcement of reasonable and just rules and regulations as to the interchange of interstate traffic and the conduct of interstate business upon the following conditions:

(a) Articles of agreement shall be subscribed by the parties thereto, stating, among other things, that they are entered into subject to the provisions of this section, the terms upon which new parties may come in, how the decisions of the association are to be made and enforced, and the length of time for which the association shall continue, which shall not be more than ten years. Such articles when subscribed and in effect agreeably to the provisions of this section shall be legally binding upon the parties thereto and be legally enforceable between them.

(b) The articles of association shall be filed with the Commission at least twenty days before they take effect. If the Commission, upon inspection of the same, is of the opinion that their operation would result in unreasonable rates, unjust discriminations, insufficient service to the public, or would in any manner contravene the provisions of this act, it shall enter an order disapproving the same. In connection with such order the Commission shall file a statement of its reasons for its disapproval. Said order shall be final and conclusive.

(c) If the Commission, upon inquiry into the actual operation of the association after the same has gone into effect, is of the opinion that it results in unreasonable rates, unjust discriminations, inadequate service, or is in any respect in contravention of this act, it may enter an order requiring the same to be terminated on the date named, which shall not be less than ten days from the making of the order. Such order shall be final, and the effect of it shall be to render such articles of agreement null and void from and after the date named, except as to claims between the parties arising prior to that date.

(d) The Commission shall have the right to examine, by its duly authorized agents, the files and proceedings of such association, including all contracts, records, documents, and other papers; and it may require said association to file with it, from time to time, copies of decisions promulgated by it, and of its minutes of proceedings, or of other papers received or issued.

All orders issued by associations thus formed that in anywise affect rates shall be filed with the Commission, as provided in the original act in relation to the filing of tariffs.

Every agreement for the formation of such associations as are authorized by this section is prohibited except as hereby authorized, and every carrier, or representative of a carrier, acting as a member of such an association or acting for a member of such association, whether the same exists by virtue of a definite agreement or not, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be subject to a penalty of \$5,000 for each day said carrier or representative continues a member thereof or so acts, which penalty shall be enforced in the manner provided for the enforcement of those penalties imposed by the tenth section of said act.

Mr. MANN. It does not require the combination or pool or whatever you call it to fix and file the rates at the time it files the agreement with the Commission?

Mr. BINGHAM. What is that?

Mr. MANN. I did not notice that your article or charter or whatever it is requires that the pool or combination shall file its rates also when it files its agreement with the Commission in the first instance.

Mr. BINGHAM. No; so Mr. Kernan says. He has studied it from its legal point more than I have done.

Mr. MANN. Do you think it would be better to do that—let the Commission know what it is doing?

Mr. BINGHAM. Would you mind having Mr. Kernan answer that?

Mr. MANN. I will withdraw it for the present; I suppose he will take the floor later on.

Mr. BINGHAM. He has gone into the legal aspects of it. This has been prepared with considerable care, and I think we would have submitted it to the railroads if we could have gotten a meeting of them before coming here.

The CHAIRMAN. Is not that proposition embodied in the bill that was before this committee, recommended by the Interstate Commerce Commission, two or three years ago?

Mr. BINGHAM. There was some such clause, but it was not identical with this one. The Interstate Commerce Commission, as I understand it, are not opposed to combinations amongst railroads. We have those combinations, and it is a great deal better, it seems to us, to have legal combinations than illegal ones. You can do something with a legal combination, but when they get behind your back and make illegal combinations, or combinations outside of law, you can not reach them; you can not negotiate with them.

Mr. ADAMSON. The bill that the Commission recommended was one so that the Commission could manipulate instead of allowing the railroads to manipulate.

Mr. BINGHAM. We hope to have a law so that neither could manipulate.

Mr. ADAMSON. Well, I will say operate it, then.

Mr. BINGHAM. We want this thing to operate fairly between individuals and between localities.

The CHAIRMAN. Let me ask you this question; do you apprehend that there would be any danger to the shipping community in investing a commission with so great a power as that of fixing rates on transportation; that is, without any criticism at all or anything invidious to the gentlemen who are on the Commission, would not that be a great power and a dangerous power to put in the hands of three men who have to deal with the great combinations of capital and the great interests at stake that would be represented by the railways? In other words, is there not a danger that a rate in the interest of the railways would be made too great?

Mr. BINGHAM. There is some danger there. There is a danger, on the other hand, that they might buy up the whole business. They might in some future years get a Commission that they could buy, and decide everything in the favor of the railroads. As far as the danger is concerned, perhaps you may notice that it does not produce the slightest effect on New York speculation whether you pass this bill or not. It would not affect stocks one-sixteenth of a per cent. The railroads are not worried about this legislation; they are not afraid of the United States Congress. They might be afraid of some of the western congresses, some of the State legislatures, but they are getting friendly

with them now. There is always the court of last resort which we will come to, and that is the United States Congress.

If you pass a law inimical to the railroads, they can come before you and worry the life out of you getting you to repeal it. But it can not last long. The legislature is always ready to remedy evils clearly brought before them. It may take time, but they will do it. The question is, who is to suffer in the interim? We say let the railroads take their turn; we have suffered long enough.

The CHAIRMAN. You have made a suggestion there that is in point. There seems to be in your mind the opinion that the railroads by worrying them, as you have expressed it, can control the action of the 357 men that compose this body and the 90 men that compose the Senate. If that is true, is it not quite as probable, or more probable, that, by the same process of worrying, 3 men might be influenced and influenced in their interest?

A BYSTANDER. Five men.

Mr. BINGHAM. Well, yes; I think it very likely. In New York State our State commissioners are paid by the railroads, so they have it conveniently in their own power; and, by the way, they are paid \$8,000, and you pay them \$6,000. If you are going to invest these men with more power you ought to give them more pay.

Mr. ADAMSON. Don't you think, in other words, it would be easier for the railroads to get three commissioners than 400 members of the United States Congress?

Mr. BINGHAM. Yes, sir.

Mr. DAVIS. There is a President also, whose veto power is equal to two-thirds of Congress. You have to include him.

Mr. BINGHAM. I was not suggesting that there was anybody in Congress who could be influenced; but you never saw a body of men in this world yet where there were not some black sheep. Out of twelve men composing a commission, the best chosen men that I have known, one turned out to be a devil. So I suppose there are men even in Congress who are bad.

The CHAIRMAN. As you business men would say, that was a little more than 8 per cent?

Mr. BINGHAM. That is about as good a percentage as the best social body of men you ever got.

Mr. ADAMSON. Do you think New York and Chicago would agree to operate under the provisions of the same bill, or would we have to have separate bills for the two cities?

Mr. BINGHAM. I think they can get along very well together. There are a great many members. We are out to get all the plunder we can.

STATEMENT OF MR. S. T. HUBBARD.

Mr. HUBBARD. Mr. Chairman and gentlemen, I am authorized by the association of which I have the honor of being president to appear here to-day to advocate the passage of a bill which will carry into effect the decisions of the Interstate Commerce Commission without delay. It makes little difference to anyone who has a question with a railway corporation if it can only be decided after the crop or two crops or three crops in which he is interested are moved to market and have passed out of existence. We feel that the cotton trade of the United States would be very much benefited if the question of

rebates and the question of discriminations could be promptly settled. We at times suffer very much from those discriminations, not only in New York, but also in New England, and also in Georgia. It is true that the Interstate Commerce Commission, by one of its early rulings, decided that the waterways did not come under its control, and therefore they have given less attention to the complaints of cotton people than they have to those of the grain people, because they held that the Atlantic Ocean is quite free to everyone who wishes to place a vessel upon it to transport cotton from a Southern port to the Northern ports of the United States, a proposition which is true in theory but not true in fact, because in the course of time the railroads have ceased to terminate their lines upon the shores of the ocean.

A railroad corporation at the present time in the South owns the American Steamship Line out of New Orleans, which is the property of the Southern Pacific Railroad; they own the Ocean Steamship Line out of Savannah, which is the property of the Central Railroad of Georgia; they own the Old Dominion Steamship Line out of Norfolk and Richmond, which is the property of the Southern Railway; they control the Mallory Steamship Line out of Galveston. The result is that cotton which is shipped in bulk or from Texas to New England or to New York is as much on the railway car after it leaves either New Orleans or Galveston as it was the day it was put upon the car at Houston or Waco. The same is true also of cotton shipped from Atlanta or Augusta, in Georgia.

As an illustration of this proposition I would cite the fact that last June a consignment of 1,100 bales from Tyler, Tex., was shipped by the way of Galveston to Cohoes, N. Y., at a freight rate of 88 cents a hundred pounds. When that cotton reached New York it was stopped in New York by order of the consignors and I paid a rate of freight of 98 cents a hundred pounds; that was on cotton from Tyler, Tex., to the port of New York. In other words, the freight rate to New York was 5 cents a hundred pounds greater than the rate to Cohoes, which, as you know, is about 150 miles north of New York City, on the Hudson and Mohawk rivers.

In a similar way this season the rate of freight from Memphis, Tenn., to Lowell, Mass., is greater than the rate of freight from Memphis, Tenn., to Manchester, England. The rate of freight from New Orleans, La., to Fall River, Mass., on the 8th of March, this season, was 38 cents a hundred pounds. On the same day in the same steamship the rate of freight to Manchester, England, via New York, was 32 cents a hundred pounds.

I might continue with many of these illustrations. I will cite but one more. It will interest my friend from Georgia. In December the price of cotton in New York was relatively below the price of cotton in the Southern ports. I could not bring it from the South to New York. Believing it to be a profitable business operation we decided to receive 50,000 bales of cotton in New York.

We bought the contracts for that purpose—I and my associates. The cotton was delivered to us. We could not buy it in the South. A large portion of it was delivered to us by the firm of Inman & Co., of Augusta, and also by the firm—I have forgotten the name, but one of the Texas firms. We found after we had received the cotton that they had secured from the railroads the privilege of delivering the cotton in New York on an export bill of lading, which gave them the benefit

of about 20 cents a hundred pounds, or a dollar a bale. We could not secure that export bill of lading because we were merchants in New York.

Mr. ADAMSON. They can ship as though they were going to export it and then stop it?

Mr. HUBBARD. Yes, sir. I state the rate was 20 cents a hundred—that is, to the best of my knowledge and belief. Mr. McKenna, of Inman & Co., was very frank about it and said that they had to have a rebate. Of course he did not tell me what the rebate was. In a similar way I had a thousand bales shipped from Galveston on an export bill of lading, and I stopped that in New York.

These are illustrations from my own business, which I cite to show the point. What we ask is simply that the decisions of the Interstate Commerce Commission may be rendered quickly, with the possibility that the merchants may derive some benefits from the decisions.

For a merchant to have a decision in his favor after four years is of little benefit to him and of no benefit to the remainder of the trade. He may obtain a certain sum of money in return for a rebate, or a discrimination which he asserts has been made to another man, by the decision of the courts, but the rest of the trade must suffer, because he has simply made an individual case. As regard all the others in the trade, they have not filed complaints, and they have not got the decision. They have paid out their freight on the cotton, the cotton has gone into consumption—it has passed away—three or four years have elapsed, and the decision is not retroactive, excepting as to the case of the man who makes the particular claim. His case is decided. That is the process, as I understand it, of law. The case only applies to the man who makes the complaint. They consider that.

As I have said before, that it is exceedingly important to the merchants of the United States, to the spinners of the country, and to the agriculturists that the Interstate Commerce Commission, which was originally instituted for the purpose of preventing discrimination and for the purpose of giving to each locality such rates as would appear to be not discriminating against other points, should have the power to carry out the purposes for which it was constituted.

Mr. COOMBS. You speak of the agriculturists. From the evidence here it seems to me that the discriminations are all in their favor.

Mr. HUBBARD. The discriminations are all in favor of agriculturists?

Mr. COOMBS. Yes. I do not see where that comes in. I would like to have you tell me where they are discriminated against. I know that a number of witnesses who have appeared here have complained that discriminations were in their favor. I am simply asking you to explain that.

Mr. HUBBARD. Take the case of the planter who raises his crop and who sells it on the basis of the freight rate that conveys it to Manchester, England—and they are buying practically two-thirds of the cotton crop of the United States. It is a less rate than the rate to Fall River. I think his price is to some extent fixed by the fact that the rate of freight is less to Manchester.

Mr. MANN. You said a while ago that the rate was 93 cents from Galveston to New York?

Mr. HUBBARD. From Tyler, Tex., to New York I paid 93 cents a hundred, and the rate to Cohoes, N. Y., on the same bill of lading was 88 cents.

Mr. MANN. Now the rate is less than 40 cents. Is that a reasonable rate?

Mr. HUBBARD. The rate is less than 40 cents?

Mr. MANN. That is the rate now.

Mr. HUBBARD. You are misapplying two places. Tyler, Tex., lies about 300 miles north—

Mr. MANN. You gave the rate from Galveston.

Mr. HUBBARD. Yes.

Mr. MANN. A little less than 90 cents.

Mr. HUBBARD. Did I say Galveston—

Mr. ADAMSON. Your rate to Cohoes was 88 cents.

Mr. HUBBARD. The rate from Tyler, in the northern part of Texas, south to Galveston and then to New York and then from New York to Cohoes was on the bill of lading 88 cents. The rate from Tyler, Tex., to Galveston and then to New York was 93 cents.

Mr. MANN. Is the present rate a reasonable freight rate?

Mr. HUBBARD. The present rate a reasonable freight rate?

Mr. MANN. Yes.

Mr. HUBBARD. The freight rate is decided by a question of supply.

Mr. MANN. But to answer the question, is not the present freight rate from Galveston to New York about 30 cents?

Mr. HUBBARD. Yes, sir.

Mr. MANN. Is not that a reasonable rate?

Mr. HUBBARD. I can not say it is a reasonable rate or not; that is, the rate of freight. It has been that rate for a number of years. It may be 28 cents or 32 cents.

Mr. COOMBS. Is it a burdensome rate?

Mr. HUBBARD. No, sir.

Mr. MANN. If they give a similar rate or lower rate to England, does not that have a tendency to increase the price of cotton?

Mr. HUBBARD. How?

Mr. MANN. It gives them competition.

Mr. HUBBARD. If the spinner in England can get his cotton at a less rate than the spinner in the United States can get his cotton, and he buys two-thirds of it, does that give the agriculturist a higher price for his cotton?

Mr. MANN. If you put the rate up to \$1.30 instead of 30 cents, and two-thirds of it had to be sold abroad, would not that have a tendency to lower the price of cotton here?

Mr. HUBBARD. I do not think so; not if the people abroad have to buy the cotton. It is not like the case of wheat. You can not buy all the wheat—

Mr. COOMBS. It gives him a more extended market, does it not?

Mr. HUBBARD. How?

Mr. COOMBS. Oh, well—

Mr. HUBBARD. I would be glad to answer your question, but I do not understand it.

Mr. COOMBS. If it renders better facilities for selling in Europe, it takes his cotton there, and it extends his market there—from one hemisphere to another—does it not? And it brings more buyers to him. He invades other markets.

Mr. HUBBARD. The cotton crop of the United States occupies the unique position of being required all over the world. It is not in the

same position as wheat. It lacks the competition that wheat has. It is needed; it has to be bought.

Mr. MANN. Does lowering the freight rate on cotton from this country to England enhance the price of cotton?

Mr. HUBBARD. I hardly think so.

Mr. MANN. Does raising the freight?

Mr. HUBBARD. It makes little difference.

Mr. MANN. Then cotton raisers are not interested in this question at all. It does not make any difference to them what the freight rate is.

Mr. HUBBARD. It makes some difference.

Mr. MANN. If lowering the freight does not raise it and if raising the freight does not depress it, how does it make any difference?

Mr. HUBBARD. It is a matter of slight moment.

Mr. COOMBS. Then the agriculturists are not interested in this question, according to your statement, now.

Mr. HUBBARD. I should think the agriculturist is interested in having an equitable adjustment of rates of freight.

Mr. COOMBS. You do not seem to meet this question. You said one thing a while ago, when I asked you why the agriculturist was interested in doing away with the discrimination. You said he was interested; and now, asking you why he is interested, you seem to have arrived at an opposite conclusion, and say that he is not specially interested in it.

Mr. HUBBARD. I am sorry if I have conveyed that impression. It certainly makes a difference to the agriculturist on the railroad from Augusta to Savannah if he is obliged to pay very high rate of freight, and a little further on less rate of freight; it makes a difference to him.

Mr. COOMBS. We do not wish to misunderstand you. Upon the question as to the effect upon the producer, whether in the South or the West, we would like to have some clear definite statement.

Mr. HUBBARD. I believe that the agriculturist in the South is benefited by the establishment of an even rate of freight.

The CHAIRMAN. The time for adjournment has arrived. You may continue in the morning, Mr. Hubbard.

(Adjourned.)

THURSDAY, *April 17, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

Mr. HUBBARD. Mr. Chairman, Mr. Higbee is here this morning and is obliged to leave town, and he would like to present his case, and I will yield to him.

STATEMENT OF MR. ROBERT W. HIGBEE.

Mr. HIGBEE. Mr. Chairman and gentlemen of the committee, I am a member of the committee on legislation of the National Wholesale Lumber Dealers' Association, and for the purpose of getting it on the record only I would like to state that I am a member of the New York Lumber Trade Association, which is a local association.

They have also indorsed this bill, but I simply want to state that as a fact, not that I have any authority to represent them, although I am a member of the association.

Mr. Chairman, I take it, from having listened to the proceedings before this committee for the past two days, that it is not worth while to take up your time with any argument in favor of the necessity of some amendment to the present interstate-commerce act. All of the parties in interest, the railroad interests and the shippers, are both dissatisfied with the present conditions, and what we are trying and hope to accomplish is a just and equitable settlement of the vexed question by an amendment to the present act, and to do justice to both sides.

The four things which the shippers are greatly in need of are: First, that all shippers shall be treated alike; in other words, that the railroads shall charge a like amount for like services under similar conditions to everybody. Second, that additional power be given to the Interstate Commerce Commission, when an injustice is being done either to the railroads or to the shippers, to say what would be right in the case in hand, and to enter an order stating what is right and reasonable as between the two parties; third, that after this order has been made they shall have the power to enforce the order, and fourth, that pending the appeal, the order of the Commission shall be in effect.

I have had prepared a table showing the distances from New York of some 25 or 30 places which ship lumber into New York, which is as follows:

Statement showing the distance, rate in cents per 100 pounds, and rate per ton per mile on lumber from points shown below to New York, N. Y.

| Distance. | From— | Rate per 100 pounds. | Rate per ton per mile. |
|-----------|-------------------------------|----------------------|------------------------|
| Miles. | | Cents. | |
| 1,182 | Menominee, Mich | 25 | 0.423 |
| 1,388 | Duluth, Minn | 33 | .476 |
| 1,348 | Ashland, Wis | 33 | .489 |
| 1,209 | Memphis, Tenn | 31 | .512 |
| 813 | Indianapolis, Ind | 22 | .538 |
| 915 | Chicago, Ill | 25 | .546 |
| 1,097 | Appleton, Wis | 31 | .565 |
| 757 | Cincinnati, Ohio | 21½ | .568 |
| 980 | Petoskey, Mich | 28 | .571 |
| 866 | Louisville, Ky | 25 | .578 |
| 715 | Bay City, Mich | 21 | .588 |
| 709 | Dayton, Ohio | 21 | .592 |
| 702 | Saginaw, Mich | 21 | .599 |
| 1,273 | Helena, Ark | 40 | .628 |
| 686 | Ironton, Ohio | 21½ | .628 |
| 683 | Ashland, Ky | 21½ | .629 |
| 411 | Buffalo, N. Y. | 13 | .632 |
| 671 | Kenova, W. Va. | 21½ | .641 |
| 667 | Huntington, W. Va. | 21½ | .645 |
| 479 | Grafton, W. Va. | 16 | .668 |
| 830 | Murphey, N. C. | 28 | .675 |
| 899 | Chattanooga, Tenn | 31 | .689 |
| 615 | Charleston, W. Va. | 21½ | .699 |
| 717 | Norton, W. Va. | 25½ | .711 |
| 604 | Camden-on-Gauley, W. Va. | 21½ | .712 |
| 584 | Wilmington, N. C. | 21 | .719 |
| 788 | Knoxville, Tenn | 26½ | .723 |
| 316 | Oswego, N. Y. | 11½ | .728 |
| 1,050 | Nashville, Tenn | 38½ | .783 |
| 630 | Panther, W. Va. | 25½ | .750 |
| 705 | Asheville, N. C. | 27 | .766 |
| 892 | Elizabeth City, N. C. | 15½ | .791 |
| 432 | Elkins, W. Va. | 21½ | .791 |
| 628 | Elizabethton, Tenn | 28 | .861 |

This table shows not only the distances, but the receipts in cents per hundred pounds, and also the rate per ton per mile, the rate per ton per mile being a constant factor in all railroad computations. This table covers twelve or fifteen different States. They are selected without any regard as to what the result would be, so that the outcome of this table is a perfectly fair result.

The point charging the most favorable rate to New York City on lumber in carload lots is Menominee, Mich., 0.423. The point suffering the greatest charge is Elizabethton, Tenn., 0.892 of 1 per cent per mile.

In other words, the shipper of lumber in the State of Michigan pays less than one-half of what the shipper of lumber from the State of Tennessee pays. The other twenty-five or thirty places vary from the 0.423 up to 0.892.

I will file this paper with the committee so that it may come before you in a regular manner.

Now, gentlemen, it ought not to take very much time to prove that there is no reason on earth why the shipper from Tennessee should pay more than twice as much as the shipper from Michigan. The cost of operating the railroads is about the same.

The CHAIRMAN. Is the cost the same?

Mr. HIGBEE. Practically. Some railroads have greater grades than others and some have greater curves, but the cost of the rails and the stock is the same. It may be a little different, but certainly there is not enough difference to warrant one railroad in charging more than twice as much as another railroad.

The CHAIRMAN. Are you familiar with the factors that enter into the cost of transportation in each case, or are you just stating this from published details?

Mr. HIGBEE. No, sir; I am not making this statement from their standpoint. I am not an expert in railroad matters.

The CHAIRMAN. I did not know but what you might know—

Mr. HIGBEE. I have been studying this subject for the last five years, and presently I will state why I took this question up.

Mr. COOMBS. Now, I do not understand this subject as well as I would like to. You would abolish the difference of rates between different points? What effect will that have upon competition? That is, you make a systematic scale with reference to prices pertaining to all things about these differentials and all else, and make some arbitrary rule; what effect will that have on the competition—that is, if you regulate prices arbitrarily by a fixed rule, will that have a tendency to do away with competition? I would like to have you pay some attention to that subject.

Mr. HIGBEE. I would like to ask a question, if I may. Do you mean competition as between the railroads or competition as between the shippers?

Mr. COOMBS. As between the railroads.

Mr. HIGBEE. The abolishment of competition as between the railroads without any regulation would be a very serious matter, but if we abolish competition as between railroads and have some competent practical power to fix the railroad rates, I can not see any reason for not abolishing the competition between the railroads, but the two must go together.

A few years ago the association which I have the honor to represent here lodged a complaint before the Interstate Commerce Commission

against the Pennsylvania Railroad, the Norfolk and Western Railroad, and the Baltimore and Ohio Railroad, the basis of the complaint being that the rates to New York from points on the Norfolk and Western Railroad were unreasonable and discriminating against shippers from that road.

Mr. ADAMSON. I wanted to ask you one or two questions about those railroad rates and distances. The point you speak of in Michigan, is that in northwestern Michigan?

Mr. HIGBEE. Menominee, Mich., is in the southern part, just over the Wisconsin line. They come together at the river.

Mr. ADAMSON. Is it any longer haul in Tennessee?

Mr. HIGBEE. Yes, sir; but the rate per ton per mile is a constant factor.

Mr. ADAMSON. I understand that, but I want to know whether the factors that make it are constant or not. The distance from Menominee, Mich., to New York is what?

Mr. HIGBEE. That is 1,182 miles and the rate is 25 cents per 100 pounds.

Mr. ADAMSON. What is the other distance?

Mr. HIGBEE. The distance from Elizabethton, Tenn., to New York is 628 miles, a trifle more than half the other distance, while the rate is 28 cents per 100 pounds. In other words, the rate per 100 pounds is greater for half the distance.

Mr. ADAMSON. Now, if a point twice as far away were to pay the same rate on lumber, it would shut that point out of the New York market entirely, would it not?

Mr. HIGBEE. That would depend on conditions.

Mr. ADAMSON. It might do it?

Mr. HIGBEE. Supposing the Tennessee rate was down on a par with the Michigan rate?

Mr. ADAMSON. Another question. Of course I do not mean to be exact as to the figures, but it is a fact that all railroads and all transportation companies are compelled to haul some commodities at a less rate per mile in order to allow them to get into the market at all?

Mr. HIGBEE. That is true. But these rates are on the same commodity.

Mr. ADAMSON. Let us see about the railroads. Through that country up there the railroads, on account of the character of the country, have very small curvatures, and a very small degree of grade?

Mr. HIGBEE. Yes, sir.

Mr. ADAMSON. And they have a tremendous volume of business all the time?

Mr. HIGBEE. Yes, sir; that is true.

Mr. ADAMSON. A railroad in that condition has fewer accidents and wrecks, has it not?

Mr. HIGBEE. That may be so, and it may not be so.

Mr. ADAMSON. The point that I am driving at is, considering all those things, with the further fact that down in the South and Southwest the railroads are newer, and on this range of mountains the railroads are newer, do not those things furnish some justification for this higher rate?

Mr. HIGBEE. They do furnish some justification, but that would hardly be sufficient to warrant them in charging twice as much for half the distance.

As I was saying, this association which I represent brought this complaint, the basis of which was that the shippers over the Norfolk and Western road were discriminated against. The testimony in the case—and I will be very brief—disclosed these facts: that the Pennsylvania Railroad controlled the Baltimore and Ohio, the Chesapeake and Ohio, the Norfolk and Western—three parallel roads. These roads all had an interest in Cincinnati. The Baltimore and Ohio road and the Chesapeake road and the Norfolk and Western road all had the same rate from Cincinnati to New York. Two of the roads, the Baltimore and Ohio and the Chesapeake and Ohio, allowed the shippers east of Cincinnati the benefit of the Cincinnati rate, but the Norfolk and Western road, while using the Cincinnati rate for the long haul up to Cincinnati, east of there ran upon the local basis, and the result was that we were paying about 30 per cent more.

Because of the decision the United States Supreme Court, which has held that competition renders the circumstances under which freight is moved sufficiently dissimilar to warrant a railroad in charging less money for a long haul than a short haul, we were barred under that clause of the present interstate-commerce act. Now, the point which I want to make is this: That is all right so far as the railroad is concerned. But the shippers of the Norfolk and Western road came into direct competition with the shippers from the other two roads in the New York market and had to pay \$1.50 and \$2 a thousand feet, to get their lumber into New York, more than their competitors, the cost of the lumber at the shipping points being to all intents and purposes the same. We feel that in view of that decision we are justified in asking that increased power be given to the Interstate Commerce Commission.

There is one point which has come up in the discussion of the last few days which I would like briefly to touch upon. There seems to be an impression made upon some of the railroad interests, and how far that impression goes I am not able to say, that this Interstate Commerce Commission, if these additional powers were conferred, would represent the shippers alone. I fail to understand why the Interstate Commerce Commission would not represent the railroad interests just as much, and just as thoroughly, as they would represent the shipping interests. They are appointed for that purpose; their powers could be used for the benefit of the railroads, if they needed the benefit of those powers, just as well as they could be used for the benefit of the shippers.

Mr. ADAMSON. What fix would you be in if the railroads should happen to secure the appointment on the Commission of three men of strong railroad predilections?

Mr. HIGBEE. Well, we would have to stand it, that is all.

Mr. RICHARDSON. The condition then would be worse than in the beginning?

Mr. HIGBEE. The condition would be very bad.

Mr. RICHARDSON. Like that of that house in the Bible?

Mr. HIGBEE. Yes, sir. However, we believe that a commission appointed by the President and confirmed by the Senate would be scrutinized very closely, and the gentlemen appointed to that commission very carefully considered before they were confirmed, and we believe that we are perfectly safe in trusting our interests in the hands

of the President and the Senate of the United States, and we are ready to take that risk.

And there is another point. The railroad interests have disseminated—

The CHAIRMAN. Let me ask you before you leave that point—you say that you are willing to take that risk. This commission would not in any event have the power to regulate your charges or your profits. Would you be content—as content—if there was a proposition to supervise your business and your charges? Would you then be as content?

Mr. HIGBEE. If there were conferred upon me the same privileges that the railroad has I would say yes. The railroad can go in and exercise the right of eminent domain, and take my house if they render—

Mr. ADAMSON. They can not take your house without making compensation.

Mr. HIGBEE. That is true, but there are instances where a man's property is worth more than market value.

The CHAIRMAN. How many instances have you known where they got less than market value where their property was taken?

Mr. HIGBEE. My experience is not sufficient, perhaps—

Mr. ADAMSON. If you know anybody that has that amount of experience, ask them.

The CHAIRMAN. You think that the right of eminent domain would compensate for the taking away from him of the right of regulating his own business and taking from him the power to regulate the price for which he would sell?

Mr. HIGBEE. If that right was conferred upon citizens everybody would have that right.

Mr. COOMBS. It is for the benefit of citizens that the right of eminent domain exists.

Mr. HIGBEE. I think that right is very broad, and if I was ever in Congress I would come here and oppose it.

I think the railroads have very great powers and very great privileges, which are very valuable.

Mr. ADAMSON. How many of them are chartered by the United States?

Mr. HIGBEE. As a direct charter, I do not know that any were. The Pacific Railroad, of course, has some legislation which allowed them to complete their road through to the coast. Most of the other railroads get their charters through the States, I think. That is a question which I do not feel competent to answer, because I have not looked it up.

Mr. COOMBS. I think the State governments do usually supervise. They have a railroad commission, just as they have examiners for the State banks and loan associations.

Mr. RICHARDSON. In my State, Alabama, the railroads pay the salaries of the railroad commission.

Mr. HIGBEE. I think that is true of the State of New York.

Mr. RICHARDSON. And we never have any trouble there with them.

Mr. ADAMSON. But the Federal Government has not undertaken to fix the charges.

Mr. HIGBEE. The Federal Government would have no right to fix the charges on anything except interstate commerce.

Mr. RICHARDSON. We have no trouble with the railroads in Ala-

bama. The salaries are paid by the railroads, and they relieve the people of that burden, small as it is.

Mr. HIGBEE. I have never heard of any trouble.

Mr. RICHARDSON. The power of the Commission is advisory, and there is never any complaint of any kind. We go along with them mightily smoothly and easily.

Mr. HIGBEE. We have had the same experience.

Mr. RICHARDSON. Then what are you complaining of?

Mr. HIGBEE. The interstate-commerce business.

Mr. RICHARDSON. Discrimination?

Mr. HIGBEE. Yes, sir; between localities. In this case it was fully 30 per cent.

Mr. RICHARDSON. The legislation which you propose is quite drastic. Do you think it would reach the rebate system?

Mr. HIGBEE. I think the rebate system should be treated in the same way as a physician treats a disease; the cause should be remedied, and then the rebates and cut rates would be removed.

Mr. RICHARDSON. How would this proposed Corliss bill relieve the railroads of that rebate system, which is a hidden affair?

Mr. HIGBEE. I will be very frank with you. I think the Corliss bill would not relieve it.

The CHAIRMAN. I did not catch that.

Mr. HIGBEE. I said that the Corliss bill will not reach the rebating or cutting of rates.

Mr. RICHARDSON. That is the chief complaint?

Mr. HIGBEE. Yes; that is the chief complaint. There are others.

Mr. RICHARDSON. And you think the bill before us would not reach that complaint and remedy it?

Mr. HIGBEE. I individually say so.

Mr. RICHARDSON. I mean you.

Mr. HIGBEE. Yes, sir. I am not speaking for my association or any other gentlemen on that.

Mr. RICHARDSON. You seem to be informed on the subject and I want to get your opinion.

Mr. HIGBEE. I am very glad to give you my opinion.

Mr. RICHARDSON. I know that. What we want to get is the very best thing for the railroads and the people.

Mr. HIGBEE. I think we all have the same object, and if there is anything that I can state I would be very glad to do it.

Mr. RICHARDSON. But the way I look at it, in my humble view of the matter, considering what I have heard here, from the variety of arguments we have had, very able and very instructive, the rebate, which is a mere matter of private arrangement, applicable to most of the localities, is one of the most serious charges that is made against the railroads. Now, the proposition in my mind is, how are you going to reach that?

Mr. HIGBEE. The only remedy that I could suggest is the remedy of allowing the railroad interests to make some arrangement among themselves, subject to the supervision and control of this Commission. For instance, if there were 10,000 carloads of lumber to be moved from Chicago to New York, if the rate was reasonable, just, and satisfactory, I can not see the slightest objection to apportioning those 10,000 carloads between the competing lines between Chicago and New York.

What difference does it make if the railroads can agree as to how many trains of cars each line would haul; they haul at the same rates, and no shipper is placed at a disadvantage to any other shipper, and I can not see any disadvantage as to that.

In conclusion, gentlemen, the lumbermen do not expect that the millenium is going to dawn when this bill is passed. We believe that so long as men are human and corporations are without souls they will all be trying to get the best of each other; but the passage of a right and proper interstate-commerce act is that for which we are striving and which we are asking at your hands, and the passage of the Corliss bill in its present form, or in some amended form, would be a long step in the right direction. There is a demand for this legislation, and I think the necessity has been clearly shown.

I leave it in your hands with the greatest confidence that you will do what is for the best.

The CHAIRMAN. Let me ask you; suppose that the law was so changed as to make it obligatory upon the Interstate Commerce Commission, whenever a complaint was made, to thoroughly investigate that complaint, to ascertain the facts, to find out where proofs could be had for further procedure in court; and suppose it was then made their duty, after they had made a case and briefed it as a lawyer would brief his case of facts, to turn that over to the proper prosecuting officer; and that that made it obligatory upon him at once to put the law in force, either by an injunction or by a prosecution to punish the offender, providing the Commission had found the evidence; and that the court was then obliged to expedite by all proper means the immediate adjudication of that matter; why is not that a remedy?

Mr. HIGBEE. That is a remedy, but it is simply transferring the power we are asking for the Interstate Commerce Commission to the courts. Somebody has to decide what is right and reasonable, and when that question is decided no one would be in a position—

The CHAIRMAN. While the court would aid it in the process of adjudicating the fact whether the rate was a reasonable one or not and by the proper punishment of the freight agent who gave to you an unreasonable rate, compelled you to accept an unreasonable rate, let the Government prosecute this case; let it be done expeditiously; let you, as an individual, in compensation for the trouble that you have been to in making the complaint, recover your damages, or whatever damages have been authorized; would not the railroads desist very quickly from conduct that would be met in that way?

Now, I have thought that the difficulty was in securing the testimony upon which a successful prosecution could be based. I believe now that there is the difficulty, and I believe that if our Commission, instead of desiring the anomalous condition of being executive officers and judicial officers, and now legislative officers, would content themselves with helping the shipper to secure the proof that would give him proper standing in court, this whole difficulty would have been adjusted long ago, and in my judgment the mistake that has been made has been made by the Commission in supposing itself to be a court instead of recognizing its real duty as that of discovering offenses and aiding in their correction. I have heard gentlemen say frequently here that this law was satisfactory up to ten years ago, and at that time the courts decided that the Commission did not have the power to fix a

rate. I do not understand that the Commission ever arrogated to itself that right in the early days.

I do not believe there was a man who voted for the bill—and I was one of them—who ever thought that they had the power under that bill to establish a rate. They did have the power, it was supposed, and no one doubts it now, to say that a rate was unreasonable, and to enjoin its correction.

But the trouble has been that when the matter comes to the courts the evidence is in the hands, largely, of a class of gentlemen who will not expose it. It is in possession, first, of the railroad companies, and then, as one gentleman here explained the other day, it is in the hands of shippers who have kindly and pleasant relations with the agents they would punish if they divulged what they knew, and hence these gentlemen simply say that they will not do it. Suppose, now, that we should remedy that difficulty; give us your opinion, if you please, as to whether or not that would be effective?

MR. HIGBEE. I think it would be effective, but I think it would be very much more cumbersome than the plan which we are proposing, because it would impose upon individuals the trouble of bringing individual suits at law.

THE CHAIRMAN. Every man has that to-day, now, when he is aggrieved, and there would be this condition which would make it unusual that there would be this favoritism to the class of aggrieved citizens that the Government would hunt out their proof for them, whereas in the case of an ordinary grievance you have to hunt up your proofs for yourself.

MR. HIGBEE. Would it not necessitate the bringing of a great many suits for the same purpose?

THE CHAIRMAN. I should think not. I do not think that usually happens. The whole human family who live within the limits of the United States may violate the law. If an occasional punishment of one man deters hundreds of men from the like offense, why would it not in this case?

MR. HIGBEE. I assure you, sir, that I have no pet scheme. I simply want the evil remedied.

THE CHAIRMAN. I simply wanted to get your opinion as to that scheme, if it would accomplish the purpose. I do not know that it will work well, but you gentlemen who are practically engaged in this matter I think should know.

MR. HIGBEE. My impression is that it would not be as effective as the one we are speaking of.

THE CHAIRMAN. It would avoid some dangers that beset the remedy you advocate, of putting the immense power, for instance, of controlling this ten or eleven billions of wealth into the hands of a very few persons.

MR. HIGBEE. Even placing that power there, Congress has still the power at any time, if this power is abused, to remedy that. The President has the power of removal, and we have put great power into the hands of a few men occasionally. The President has power in his one hand which is beyond and away above the power that we are asking for these five men, and he is in for four years.

THE CHAIRMAN. No; the President has the power of removal in case of misconduct.

MR. HIGBEE. Congress has the power to repeal the law, and the

President has power to call Congress in extra session within a very few days. We think that it would be perfectly safe. We are simply striving for the best that we can get. We do not expect ever to reach a perfect condition.

The CHAIRMAN. I do not assume that that would be a remedy, but I simply suggested it to you.

Mr. HIGBEE. I have tried to answer your questions to the best of my ability, and if there are no further questions, I thank you, gentlemen, for your kindness in giving me this time.

The CHAIRMAN. We are certainly very glad to have heard you.

STATEMENT OF MR. S. T. HUBBARD.

The CHAIRMAN. You heard the question which I just asked your predecessor?

Mr. HUBBARD. Yes, sir.

The CHAIRMAN. Will you answer that question?

Mr. HUBBARD. I would like to have it, the substance of it, reread, as it is a pretty long question, Mr. Hepburn, and involves a good many points. I think that all I have heard of all the questions that have been asked by the committee were very interesting and instructive to me, and they have been no doubt answered and thrashed over in the adoption of this interstate-commerce law.

The question you asked first, as to whether a man would be willing to invest his money in an enterprise which falls under the laws of the United States or States which regulate the traffic can be answered simply by experience. The different States have railway commissions which have fixed rates on the goods transported over the lines; the other States granted charters, and that has not prevented railroad building in those States. I do not know whether the State of Ohio has such a commission.

Mr. TOMPKINS. The State of Ohio has a statute fixing the maximum charges for freight and passengers and also has a commission.

Mr. HUBBARD. Since that time I have myself invested a sum of money in Ohio, from Sandusky down to Zanesville. I have lost it, of course—

Mr. MANN. But that is all subject to correction by the courts before the rates are put into effect.

Mr. HUBBARD. The rates are put into effect, as I understand the decisions of the railroad commissions, and they have gone into effect, and the shippers have paid them and have appealed—or the railroads have appealed—to the State courts for decisions on those points. If my memory serves me correctly, that has been done in Texas, and the Nebraska rate case is a decision in that line, if I am not mistaken.

Mr. MANN. In every one of those States the railroad companies can file a bill for injunction in the United States courts and enjoin the putting into effect of these rates until the courts have passed upon the reasonableness of the rates. This bill that you propose—whether that is constitutional or not is another question—provides that rates shall be put into effect before the court has an opportunity of passing upon them.

Mr. HUBBARD. My understanding of this bill is that it gives the Interstate Commerce Commission the power to carry out the purposes of the interstate-commerce act and enforce their rulings at the start.

Then, if a ruling is wrong, it is carried into the courts, but it maintains its position as a legislative enactment, as you might term it, until it is decided by the court. At the present time the rate is made and the shipper objects to it, but he pays it and carries it into the court for a decision. Is not that the difference?

Mr. MANN. At the present time a rate, of course, does not go into effect until the court says so, if the carrier appeals to the court. Let me understand. Under this bill it is my understanding that the Interstate Commerce Commission, upon complaint, makes an investigation and decides what the rate ought to be, and thereupon the railroad company may appeal to the courts, but meanwhile the rate shall go into effect, unless the court, by special order, finds that there is a plain mistake. Pending the appeal to the court the rate shall be in force and effect.

Mr. HUBBARD. Yes, sir.

Mr. MANN. It takes about how long for a case to go through the Supreme Court of the United States?

Mr. HUBBARD. I do not know, sir.

Mr. MANN. Most of the gentlemen who have appeared before us have assumed to know, and assume that it takes three or four years.

Mr. HUBBARD. I have never had a case in the Supreme Court of the United States.

Mr. MANN. It is quite certain that under ordinary circumstances the Supreme Court of the United States would not pass upon a question short of two years, and by that time the order would have expired; and thereupon the Interstate Commerce Commission, before the first case is disposed of, can make a new order, which can stand in force pending an appeal, and through that process they can go on making rates forever, notwithstanding any appeals to the courts.

Mr. HUBBARD. I understand that this bill would make the rulings of the Interstate Commerce Commission of the same weight as a ruling of the Treasury Department. If I am an importer, and import goods and pay the duty on them, I protest to the Treasury Department, and the Treasury Department states that that is a ruling, that that is the rate—

Mr. MANN. Yes.

Mr. HUBBARD (continuing). And I pay that money, that duty, and then I appeal to the courts, and until the case is decided the Treasury Department retains that money.

Mr. MANN. And if the case is decided against the Government, you get the money back.

Mr. HUBBARD. Yes, sir.

Mr. MANN. But if this other case is decided against the Interstate Commerce Commission, the railways are out the money. They do not get it back.

Mr. HUBBARD. That is true, but that is a matter which is not impossible of remedy.

Mr. MANN. How would you remedy it?

Mr. HUBBARD. If the decision of the Interstate Commerce Commission was appealed from by the railroads, it is perfectly possible to provide that the rate of freight shall be paid and the money shall remain—I do not know the legal term, in trusteeship or custody—until the question is decided.

The CHAIRMAN. In order to be just you would have to apply that payment to every other transaction of like kind.

Mr. HUBBARD. Yes, sir.

The CHAIRMAN. Then, what would be the benefit to the shipper. He is out his money.

Mr. HUBBARD. Very true, he is out his money.

The CHAIRMAN. And you have got to burden both with this double system of accounts.

Mr. HUBBARD. I say it is not impossible of remedy, and I simply suggest this in an offhand manner.

The question the gentleman asked me was, that the Treasury of the United States was always here, and the importer could recover the money from the Treasury of the United States the moment he got his decision, but the railroad did not know that the shipper would always be there, and therefore did not know if the money could be returned. That was the point the gentleman wanted to make.

Mr. MANN. What would you think of it if the importer should fix the rate upon the goods and then give the importer an opportunity to appeal to the Supreme Court of the United States—to the courts—and have it passed upon in four or five years; but meanwhile the importer must pay the duty upon the goods, with no possibility of ever recovering it back. That would be exactly analogous to the proposition you have made in regard to the railroads.

Mr. HUBBARD. I hardly think so. The rates are fixed by legislative enactment.

Mr. MANN. They probably do not know any more about their rates than the Treasury does about import business.

Mr. HUBBARD. That is true; but the power has already been delegated, as I understand it, to the commissioners in the different States to fix the rate, and the States have not found that it is highly objectionable.

Mr. MANN. But in every case where it is fixed by the State, it is subject now to the correction of the courts. Nobody questions it.

Mr. HUBBARD. Would not these rates be subject to final correction by the courts?

Mr. MANN. After the shippers had obtained the benefit of the rates, the court might decide that those rates were not proper rates, but meanwhile one of the parties is absolutely out.

Mr. HUBBARD. Yes, sir. At the present time the shipper pays the rate, and he sues under the interstate commerce law, and he carries that onus.

Mr. COOMBS. You would like to vest the Commission with judicial functions, would you not?

Mr. HUBBARD. Subject to revision, as provided for in the bill.

Mr. COOMBS. I understand in fixing these rates they would go into effect immediately, pending the appeal. Would that be by reason of the exercise of a judicial function or an executive function on the part of the Commission?

Mr. HUBBARD. I should think that would be in the nature of an executive function rather than a judicial one. It has both bearings, but I should judge so.

Mr. COOMBS. Have you ever studied the constitutional feature of that provision?

Mr. HUBBARD. The rates are fixed by the legislature, as I have just said; it is a legislative function.

Mr. COOMBS. The legislature, though, can fix an unreasonable rate?

Mr. HUBBARD. I beg your pardon. They have the power to fix—

Mr. ADAMSON. Fixing rates would be really a legislative function?

Mr. HUBBARD. Yes, sir.

Mr. ADAMSON. Delegating the power of legislation to the Commission when we justify them in prescribing rates which the railroads are bound to conform to.

Mr. COOMBS. Inherently it is a legislative power; however, you want to vest the Commission with judicial functions? Now, do you propose to invoke one of those judicial functions in promulgating these orders and fixing the rates, after determining by the evidence what the rate should be? Would you do that in a judicial proceeding or just simply a summary matter?

Mr. HUBBARD. I think that, of course, is a matter which the commission would have to—

Mr. COOMBS. That is an executive act?

Mr. HUBBARD. Yes, sir.

Mr. COOMBS. Now, if you could do that, why would you want to vest the Commission with judicial functions?

Mr. HUBBARD. Why? In order to carry out an executive act there must be some power to carry it out.

Mr. COOMBS. If you wanted to carry out an executive order you would have to go and get a judgment on it. I do not imagine that any court would get out an execution on some executive order of somebody.

Mr. HUBBARD. No, but I think the order of the Commission—

Mr. COOMBS. I would like to get a clear understanding as to what the idea is as to the power of this Commission.

Mr. HUBBARD. The Commission has, under the present ruling of the Supreme Court, the right to fix a rate, as the chairman says.

Mr. COOMBS. I understand.

Mr. HUBBARD. The questions which you are asking me I think have been ably answered before, before Senator Cullom's committee, which sat for years, and drew the original Interstate Commerce act.

Mr. MANN. Which, by the way, does not anywhere purport to give the Interstate Commerce Commission the power to fix rates.

Mr. HUBBARD. No, sir; I do not think it does; but it was the belief—I am quite at variance with the chairman on that point—that the purpose of the interstate-commerce act as originally adopted was to accomplish what the granger legislation of the West had attempted to accomplish, namely, the avoidance of discrimination between localities and individuals.

Mr. MANN. That still remains untouched in the law.

Mr. HUBBARD. If that remains untouched in the law, how are you going to rectify discriminations between individuals and between localities, unless you give the power to some one to do it?

Mr. ADAMSON. If we do summarily assume here to delegate to the Commission the executive function of fixing rates and the judicial function of hearing and determining causes, and delegate the legislative function of enforcing rates, thus violating the Constitution, which says that the three departments shall stand separate—

Mr. COOMBS. And that you can not take a man's property without due process of law?

Mr. ADAMSON. That is another provision.

Mr. MANN. What is there in this bill which shall prevent discriminations between individuals in rates?

Mr. HUBBARD. I believe this bill gives the power to the Interstate Commerce Commission, after investigation and decision, to issue an order that the rate from a certain place to a certain place shall be so and so.

Mr. MANN. That would be simply to make a schedule rate?

Mr. HUBBARD. Yes, sir.

Mr. MANN. What is there in this bill that has a tendency to punish the giving of rebates or the giving of a lower rate to someone?

Mr. HUBBARD. There is an express provision in the bill for that purpose.

Mr. MANN. I have not seen it; I have not seen any provision in the bill which—

Mr. KERNAN. Yes, sir; that which forbids the shipper from shipping at any except the regular rate. That is one of the provisions in this bill which is new. The carrier can be prosecuted and punished, but the shipper never has been liable to any punishment or penalty for shipping or attempting to ship at less than the published rate. That is provided for in this bill and is one of the essential things in it. We want to stop shippers from cheating as well as the railroads.

Mr. MANN. You want to stop the briber as well as the bribed?

Mr. KERNAN. That is a provision in this bill, to punish the man who attempts to, or who does, ship at a rate less than the published rate, just as it punishes the carrier for doing the same thing.

The CHAIRMAN. Does not that simply add another incentive to secretiveness? As it is now, the shipper can not be punished. Therefore there is no reason for his not divulging the information against the carrier, except his own personal interest.

Now, by making it an offense on his part, you put an incentive in the minds of the two persons who must know about the violations of the law to shield one another.

Mr. MANN. And you give each an opportunity to decline to testify for fear of incriminating himself.

The CHAIRMAN. I wish you would tell us, if you have studied this bill, how the railroad, under this bill, would protect itself against confiscation of its property if the Interstate Commerce Commission chose to make rates so low that it would be a confiscation of its property?

Mr. HUBBARD. That is a question which is beyond my capacity to answer. I think you had better ask my friend, Mr. Kernan here, as to that. He has been upon the New York State commission, and his recommendations were largely adopted by Senator Cullom's committee on that question.

If there are no further questions, Mr. Chairman, I thank you for your courtesy.

STATEMENT OF MR. JOHN D. KERNAN.

Mr. KERNAN. Mr. Chairman, the gentleman has referred to the fact that I had some experience of these questions. From 1883 to 1887 I was the chairman of the New York State commission, a commission

that acted under the Massachusetts idea of having power to investigate and ascertain the facts and spread them before the public, and by giving to the injured party possession of the proof and by invoking the aid of public opinion upon situations where the railroads were doing wrong, seeking in that way to accomplish, without the exercise of arbitrary power, a regulation, a real and fair adjustment of disputed questions between railroads and shippers.

And during those four years—the time when I resigned was in 1897—this question of the interstate-commerce bill and the interstate-commerce law was constantly obtruding itself upon the attention of every commission throughout the country, and the necessity of some Congressional legislation to reach that vast mass of commerce which could not be reached by the States was a subject of constant study and investigation and talk and pooling, and all these questions were at that time being investigated and thought about as remedies for the acknowledged evils which arose in the interests of railroads, seeking, of course, opportunities to make what they could, and the shippers seeking advantages at all points, low rates and just rates.

At the time Senator Cullom's committee was appointed it opened its sessions at New York City, and then went all over the United States and spent the entire vacation season in hearing these questions, such as are before you, discussed. They honored me by asking me to come before that body, and I think I appeared as the first witness and talked for two or three days, after having studied these matters as well as I could. At the close of the hearing, and subsequently, Senator Cullom wrote me asking me to draw a bill in accordance with the ideas discussed, and I drew the bill which the Senate virtually adopted.

I did not believe that it was wise to legislate at all upon the pooling question at that time. Pooling was under common-law prohibition to such an extent that the railroads could not enforce pooling agreements in the courts between themselves; and I believed they were working toward what is now being accomplished in another way, that is, working toward some sort of arrangement among themselves which should prevent competition which impaired their usefulness and depleted their revenues beyond the point which they ought to receive, and they were working toward a uniform classification throughout the United States, and toward rules and regulations as to the interchange of interstate traffic which were desirable.

And on the other hand the far-reaching effects of pooling appeared to me to be so great as at that time not to justify with the experience that there was in this country anything which went to the extent of legalizing the authorized pooling. My opinion was that they ought not to do anything in regard to that at that time, but of course to take the safeguards which would be best upon experience, and as to which we had some experience to know what we were doing, and so to follow the English acts as to the requirement of reasonable rates and the prohibition of unjust discriminations; and the third section, which provided that localities and individuals should not be favored in any way by special rates. The Senate adopted that bill virtually in that form as being the law which affected the situation, and beyond that appointed a commission for the purpose of investigating and determining, as I believe, at that time, the subjects before the courts for legislation.

Now, the House, you know, under the leadership of Mr. Reagan, inserted it in this bill. Without going into any details about rates, and

all that, the situation about rates was disposed of in many respects by the interstate-commerce law. I think much of the discussion here was forecast by them upon many questions, and I think if you gentlemen will take the reports of the Cullom committee you will see that many of these questions which we are now discussing were at that time supposed to be settled, and it was believed that there was no remedy left for the purpose of correcting the evils that existed, and these questions between shippers and the carriers, except the passage of the interstate-commerce law and the creation of the Commission as a special tribunal for the purpose of hearing and deciding these questions, and to a certain extent—I will point out afterwards how far—as to rates.

Now, I will not go into the question of the courts further than to say, the Interstate Commerce Commission—the representative of that Commission—pointed out that the courts and the remedies of courts, open and available to shippers or to localities that were suffering from unjust discriminations in rates, or from too high rates, had ceased to be a practical source of relief, owing to the vast growth of the railroads, and owing to the vastly changed complicated situation which arose in reference to these questions. The procedure of all of our courts, mind you, was based upon the questions which arose when the stage coach was the great means of transportation in England and this country, and those methods of procedure are, therefore, as far behind the present necessities of the tribunal to pass upon them as the locomotive and its train to-day, and its capacity of moving freight in vast quantities at a time, is beyond the conditions that existed when the stage coach flourished.

So that in many of these questions, I say, you can regard the interstate-commerce act as deciding that the time had come when the common-law remedies of the courts had ceased to be sufficient for the protection of the public against railroads upon these questions—for the speedy decision of these questions between the railroads and the public—and that the experience of 20 or 30 States up to that time had been virtually adding to the conclusions and had finally reached that as a conclusion; that it was necessary to have some special tribunal of men whose time was devoted to the study of these questions, in order to have anything practical in the way of a body that could reach a speedy conclusion.

Now, I have had a good many experiences before the Interstate Commerce Commission. I have been employed by boards of trade and many bodies of that kind. I have never been for the railroads, but always on the other side of the question. But in all of those cases, up to the time that the Supreme Court of the United States made the decision—which was against the unanimous opinions of the courts below, mind you—in 1897, ten years after the act was passed, neither the Commission nor the railroads, nor anybody else, took the position that they did not have the power to fix rates to the extent that we now ask that it be given to them. The orders of the Commission all ran in that way, that they found that the rate complained of was unreasonable to such an extent, and that the carriers should cease and desist from charging said rate, and should thenceforth cease from charging the said rate.

That was never questioned until the case which I carried there to the Supreme Court of the United States, and argued there twice, "The import rate case," and then also in the "Social circle case;" and right

here I may say that that includes the question whether the inquiry whether rates are reasonable or not is a judicial act. That is, whether the inquiry before the Interstate Commerce Commission, whether a rate is or is not reasonable, is a judicial act, and the Supreme Court says, "But to prescribe rates for the future is a legislative act." So that you have in this Commission a combination of the duty of saying, first, whether the rate is fair and reasonable, and then, second, as a part of their order, what the rate shall be for the future.

So, under the United States Supreme Court's decision, you have a delegation of the sole legislative power of letting that Commission say what for the future shall be the rate; and whether that is a dangerous grant of power, whether it exists, whether it was originally designed by the interstate-commerce act, is a question. The act has failed for the lack of that power up to the present time to accomplish the result intended.

Mr. ADAMSON. Do you think that Congress can delegate that power?

Mr. KERNAN. The Supreme Court holds that they can.

Mr. ADAMSON. That Congress can delegate it?

Mr. KERNAN. Yes, sir; they hold it in all its fullness in reference to all these laws, in reference to Texas and these other States. The laws have been brought up, for instance, in the Texas case, where the order of the Texas commission was appealed to the Supreme Court of the United States and they reversed the order and held that it violated the Constitution in taking property from the railroads. That is, it was decided in that case that the commission under its power to fix rates could not confiscate; they can not fix a rate that is lower than affords a railroad a reasonable return.

Mr. ADAMSON. That was a State commission?

Mr. KERNAN. Yes, sir. In that case, however, Congress, without—

Mr. ADAMSON. Most of these States have a constitutional provision authorizing the railroad commission—

Mr. KERNAN. Yes, sir; but they hold that it is a legislative function that can be delegated. The Supreme Court of the United States has held that proposition, and the interstate-commerce act has never been questioned by the Supreme Court. They simply say that Congress has not given the Interstate Commerce Commission that power, but it has been held positively that the Congress, or the legislature of a State, can delegate that portion of its power which authorizes it to fix rates for the future.

Mr. ADAMSON. Congress can fix rates for the future?

Mr. KERNAN. The Supreme Court of the United States has held that Congress itself, and no other power, can fix a rate for railroads which is not subject to judicial review. In order to ascertain whether it violates the Constitution in putting a rate so low as to mean a confiscation of property—

Mr. COOMBS. Here is the question: Supposing we give the Commission judicial functions, would those judicial functions conferred meet the requirements of the law, and permit that Commission to determine those questions in a manner from which there would be no appeal to other courts?

Mr. KERNAN. I have said that Congress itself can not fix a rate which is not subject to judicial review. Congress can not delegate any power which it has not itself. It can delegate to the Commission

the judicial power to determine whether a rate complained of is fair or not, but it will be subject to a review and decision by the courts.

Mr. COOMBS. It is a quasi judicial power.

Mr. KERNAN. Is not that quasi judicial?

Mr. COOMBS. It is a judicial power which pertains to it. It does not make a court of them.

Mr. KERNAN. Not in that sense. The Supreme Court says: "Congress has said that the Commission's power is in the nature of a judicial power"—quasi judicial.

Mr. COOMBS. Yes, sir.

Mr. KERNAN. And if you go further the Commission is authorized to prescribe rates for the future. There you are delegating to the Commission a part of the legislative power that you exercise, but you can not delegate it to be exercised by the Commission in any other way than you would exercise it yourselves, and necessarily its exercise will be always subject to judicial review. Whether a rate fixed is right or not it is always to be subject to review.

Mr. MANN. This bill, of course, provides for a judicial review, or rather method of review, of the action fixing rates.

Mr. KERNAN. Yes, sir.

Mr. MANN. Now, these gentlemen coming here representing business and shipping interests have the impression that that is the only method of reviewing the rate fixed by the Interstate Commerce Commission, and until the courts in that method may have decided that those rates are unreasonable the rates shall remain in force. What do you say about that?

Mr. KERNAN. Why, I understand the Nelson-Corliss bill to prescribe that a rate fixed by the Commission shall be fixed as though it had been done by yourselves—

Mr. MANN. Yes.

Mr. KERNAN (continuing). Subject to the right of the railroad to adopt the legal method provided in this bill for reviewing, or subject to any other common-law method that exists.

Mr. MANN. That is what I wanted to get. Has Congress the power to say that the courts shall not entertain original jurisdiction of a suit for injunction?

Mr. KERNAN. An act of Congress of itself in that regard is never construed as depriving the courts of any jurisdiction inferentially. Now, there is nothing in this except an inference that it is the only method.

There is nothing in this bill to the effect that this shall be the only method. I think this bill leaves it open to the railroads to say upon attack by a decision that a certain rate is unjust; that they can pursue this method for obtaining obedience to it or any other common-law remedy of the United States court for that purpose.

Mr. MANN. So that, as a matter of fact, in your judgment, if this bill became a law, the railroad companies would have the same rights in court to prevent the putting into operation of tariff rates fixed by the Interstate Commerce Commission that they now have to prevent the putting into operation of rates fixed by a State commission?

Mr. KERNAN. Yes, sir; they would do exactly as they have done. As I told you, during the ten years during which I was engaged in these questions under the first law, the railroads never questioned the fact that the order of the Commission was just what we ask that it shall be under this law.

Mr. RICHARDSON. Is not the effect of that bill this, that while the courts are reviewing the question of the reasonableness or unreasonableness of a rate fixed by the Commission the railroad is losing revenue while the order of the Commission is in effect?

Mr. KERNAN. Yes, sir; they are losing revenue wrongly.

Mr. RICHARDSON. Because ultimately the court hold that a rate is just?

Mr. KERNAN. Yes, sir.

Mr. ADAMSON. Don't you think, as a lawyer, that we could render the public a greater service in any other way by facilitating and expediting hearings regarding the questions growing out of transportation?

Mr. KERNAN. That was all gone into by the Cullom committee. Are the remedies in the courts sufficient to protect the people?

Now, the reason for the establishment of the Interstate Commerce Commission was because after investigation that able committee reached the conclusion, and so reported, giving their reasons at great length in the report, that the remedies in the courts had become so obsolete and difficult of enforcement that there was no protection for the shippers in that direction.

Mr. ADAMSON. Can not the law provide for expediting the cases?

Mr. KERNAN. I will give you an instance of an expedited case, beginning and going clear through to the Supreme Court of the United States, the "import-rate case," a very important case. The case was brought by the board of trade, the transportation and commercial exchange, and the Philadelphia Chamber of Commerce, of Philadelphia, against 28 railroads, the Pennsylvania Central, and all these lines to the West.

That was begun in 1898. In the first place, it was begun against about 15 railroads, and then these additional parties were added because it was found that the connections with the others were affected, and they came in as parties, and then the Commission itself found that any order they might carry would reach out and affect other railroads; so we had to wait until we got the defendants all in and got their defense in. Now, I got a decision in favor of my company in that case. I need not go into what it was, but it was to the effect that inland rates between the seaboard and the interior should be the same for foreign and domestic traffic. We found that the Texas Pacific took dry goods, if you please, on a through bill of lading from Liverpool to San Francisco at 80 cents a hundred and on their inland bill from New Orleans to San Francisco their tariff rate was \$1.20 for the same service for goods shipped at New Orleans. Our contention was that the inland traffic must be charged the same—that they must make the same tariff for inland as well as domestic traffic.

In the first place, that was designed to protect the manufacturer of American goods. If the foreign manufacturer could ship his goods on a through bill of lading at that much lower rate, his goods would come in, and the manufacturer, for instance, of clothing in New York City would be at that much disadvantage, and the difference in rate would be in many cases sufficient to practically wipe out the tariff laws. That was the point I was fighting for—the same rates for inland traffic between the seaboard and the interior for like service. The Commission decided in my favor.

Mr. MANN. How long was that pending before the Commission?

Mr. KERNAN. That took the Commission from December 5, 1899, to January 29, 1891. They held hearings all over the country and took an immense amount of testimony, and you, gentlemen, if you will go through a series of hearings of that kind, could imagine what it is to go into that question of rates.

Mr. ADAMSON. That was fourteen months.

Mr. KERNAN. Yes, sir. Now, it was before the Commission, and we had hearings and pushed it all the time, and we had San Francisco in, and New York, and Philadelphia in; and all their different conflicting interests upon that subject had to be heard and reconciled in order to fix rates.

Mr. ADAMSON. In that case?

Mr. KERNAN. Yes, sir; in a case involving that. You can imagine in a case involving the import business of the United States and involving a thorough investigation of conditions in respect to it, that it would take a great amount of time.

Mr. ADAMSON. That probably is the most important case that has ever been decided relating to the interstate-commerce traffic.

Mr. KERNAN. I should imagine it may be. Some of the railroads did not obey the decision of the Commission. Eighteen of these roads obeyed the orders of the Commission at once, including all the systems running from New York west. They all said that the decision was right, and they obeyed it. Ten of the roads, however, kicked, and of those that refused to obey the decision the Texas and Pacific was the principal one.

Then the Commission employed me to bring an action and push it as hard as I could, and get a decision against the Texas and Pacific, and those roads who refused to obey their order, and that matter was begun. I began that action for the Interstate Commerce Commission, mind you, on January 19, 1892. A plea to jurisdiction was first inserted, before they answered. That was overruled and decided in favor of the Commission. A motion for argument was made and denied. Then, after the hearing of November 26, 1892, it was decided again in my favor, and an injunction was granted against the railroad compelling them to comply; and then in December, 1892, the same judge granted an appeal. That is a remedy which is open to all of them—

Mr. ADAMSON. That is the very point that I was making to you, that unless we do provide for expediting the matter in the courts—

Mr. KERNAN. This was all expedited. There was no trifling. There was no trouble in getting hearings as soon as there was a session of the court, but you know how it is with the United States circuit and district courts. In the State of New York we have two sessions a year of the circuit court, and that does not afford any opportunity for speedy hearings even there. I imagine that in other parts of the United States hearings of the circuit and district courts are much more rare. And you go to the southern part of the State of New York and look at their calendars—10,000 cases on there, I think, of revenue cases alone. You can not get a revenue case heard under five years. But we got it expedited, this case being important.

Then they granted a motion staying the order pending the appeal, and I think that is an ample protection to the railroads always, in any close case, in any case where there seems to be doubt about the justice

of an order made by this Commission. The circuit courts of the United States and the district courts always stay pending an appeal.

Mr. MANN. That is not a provision of this bill.

Mr. KERNAN. It is a provision of this bill substantially; yes, sir.

The CHAIRMAN. Oh, no.

Mr. KERNAN. That is, the order shall go into effect unless a stay be—

Mr. MANN. No question of doubt be raised in it. In any doubtful case—

Mr. KERNAN. I am coming to that.

The CHAIRMAN (reading):

Either party may, within thirty days, appeal from the judgment or decree of the circuit court to the Supreme Court of the United States; but such appeal shall not operate to stay or supersede the order of the circuit court.

There is the same provision with regard to an appeal from the Commission.

Mr. KERNAN. No appeal does stay, your honor, in all our legal proceedings; the appeal does not stay proceedings. You have to get a stay in one of two ways—

The CHAIRMAN. That evidently means that there shall be no stay, in any way.

Mr. KERNAN (continuing). By supersedeas bonds—

Mr. MANN. An appeal, then.

Mr. KERNAN. No, sir. In New York City no appeal stays a proceeding except in one of two ways—in money cases a bond and in equity cases an injunction. You can get it upon application to the court. However—

Mr. MANN. I practice law in a common-law State—of course no one can keep up with a code State—where an appeal always stays proceedings, if you get the appeal.

Mr. KERNAN. Now, I want to say that there is one place in this bill—

The CHAIRMAN. Before you pass from that, you say there are in New York two methods of procuring a stay. One is by the filing of a supersedeas bond and the other is by the process of an order of the court. Now, does not this language cover both of these methods?

But such an appeal shall not operate to stay or supersede the order of the circuit court.

Is not that a prohibition upon any court, so far as you can prohibit the court, to grant a suspension of that order in any way, either by a writ of injunction or by the filing of a supersedeas bond?

Mr. KERNAN. I do not think I understand the act, your honor, if that is so.

The filing of a petition to review an order—

The CHAIRMAN. You have explained to us that in New York there are two methods of procuring a stay.

Mr. KERNAN. Yes, sir.

The CHAIRMAN. One is by the injunction and the other by the filing of a supersedeas bond. The filing of a supersedeas bond can not be done under this act at all.

Mr. KERNAN. Then there is no remedy of that kind to the railroad at all.

The CHAIRMAN. If those are the two methods now by which super-

sedeas results are obtained, if they now exist and those are the two, are not both of them superseded by this act?

Mr. KERNAN. What do you do with the language, "The filing of a petition to ~~renew~~ an order shall of itself suspend the effects of such order for thirty days?"

The CHAIRMAN. Yes, sir.

Mr. KERNAN (reading):

And the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

Does not that leave any remedy open?

The CHAIRMAN (reading):

If upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise.

Mr. KERNAN (handing copy of Corliss bill to Mr. Richardson). I want the committee to see that I have marked those words to be stricken out. In other words, I do not think that the eminent jurisdiction of the United States courts to grant stays pending appeals should be interfered with by language which requires, as this does, that they can not exercise their well-known power of staying during appeals unless it "plainly appears," and so forth. That would be changing the whole method of proceeding in the United States courts. That would be, in effect, prohibiting that court from protecting the railroads under the ordinary circumstances under which they would protect a suitor. I do not think those words ought to be put in.

Mr. MANN. How much have you marked there to be stricken out?

Mr. COOMBS. All the witnesses who have appeared before us have proposed that that should be put in there. That has been the burden of the song of all of them—that that is the remedy that has been sought.

Mr. KERNAN. I do not know; they were laymen. I am a lawyer. I do not know that my opinion is any the better for that.

Mr. RICHARDSON. That has been the chief objection that the committee has been finding with this bill.

Mr. MANN. What would you strike out?

Mr. KERNAN. I would strike out from the word "also," in line 11, on page 6 of the Corliss bill, down to the word "suspend," in line 14. Then it would read:

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending shall suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

The court keeps its ordinary jurisdiction to protect a suitor who makes any complaint against a decision of the Commission, with its ordinary power of protecting him by a stay.

Mr. COOMBS. That removes one of the difficulties before the committee.

The CHAIRMAN. Then you would have to modify in some way the language, beginning with the word "but," in line 19. You certainly would have to modify that language.

Mr. KERNAN. I think not (reading):

Either party may, within thirty days, appeal from the judgment or decree of the circuit court to the Supreme Court of the United States; but such appeal shall not operate to stay or supersede the order of the circuit court.

I do not propose that an appeal shall stay proceedings but for thirty days, and I propose to leave the circuit court with its power to protect suitors in all cases of appeals by granting a stay pending appeal whenever the appellant requires it.

Mr. MANN. You mean a man to have a right of filing a petition for a writ of error in the supreme courts in order to stay the operation of a writ?

Mr. KERNAN. Yes, sir.

Mr. MANN. And obtain an order from the court?

Mr. KERNAN. Yes, sir.

Mr. MANN. So that this order, the judgment of the circuit court—it just goes directly from the circuit court to the Supreme Court?

Mr. KERNAN. Yes, sir.

Mr. MANN. If the order of the circuit court happens to be entered in June of a year, there would be no chance for a stay of proceedings for some time, unless the Chief Justice, as a matter of form, provided for a stay of proceedings in all cases.

Mr. KERNAN. That is true in all cases of appeal in equity cases to the Supreme Court of the United States.

Mr. MANN. I know; but the custom is in every case for the court below to stay the operation of the judgment in order to give the parties an opportunity of getting a stay of proceedings from the Supreme Court of the United States if they are entitled to it. I do not think you will find in any court, under any circumstances, the provision that the appeal of the court below shall take effect within thirty days unless a party gets a supersedeas from the Supreme Court of the United States within that time.

Mr. KERNAN. Yes. Well, I will say in reference to that, without spending time as to how far that changes this rule, that I do not think this bill in any respect ought to put a railroad before the courts in any other position than a suitor always is in against whom a judgment has been rendered, and who wants it reviewed before it goes into effect. He may ask the granting of a stay, and a court may pass upon that.

That is the rule we should have here, and we should be careful in legislation never to go into language which changes the fundamental practice of administration of justice in the courts, otherwise you are making a very dangerous change.

The CHAIRMAN. The hour for adjournment has arrived, and if you will now suspend you will have the stand at 10.30 to-morrow morning.

STATEMENT OF MR. WILLIAM R. CORWINE, OF NEW YORK CITY.

Mr. CORWINE. Mr. Chairman, I desire to leave the city, and I would like to have the privilege of going home and sending you what I have to say in written form on behalf of the organization which I represent.

The CHAIRMAN. Very well. How soon can you have it here?

Mr. CORWINE. I will try and dictate it to-morrow. I would like to have it noted on the record that I was here representing the Merchants' Association of New York City, also as a member of the committee advocating the passage of the Corliss bill.

The CHAIRMAN. Very well; your brief, when filed, will be inserted in the hearings.

Thereupon (at 12 o'clock m.) the committee adjourned until to-morrow, April 18, 1902, at 10.30 o'clock a. m.

FRIDAY, *April 18, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. I desire to lay before the committee this morning a letter, addressed to the chairman of the committee, from Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, which is as follows:

INTERSTATE COMMERCE COMMISSION,
Washington, April 17, 1902.

Hon. WILLIAM P. HEPBURN,
*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

SIR: I beg to acknowledge receipt of your letter of the 16th instant, requesting my associates and myself to present to your committee their views respecting proposed legislation, and to say that some or all the members of the commission will be pleased to appear before your committee on Monday next, the 21st instant, the date suggested in your communication.

Thanking you in behalf of the Commission for the courtesy extended, I remain,
Very respectfully, yours,

MARTIN A. KNAPP, *Chairman.*

STATEMENT OF MR. JOHN P. KERNAN—Continued.

MR. KERNAN. Mr. Chairman, I endeavored yesterday to state that certain propositions seem to me to have been settled with respect to the interstate-commerce law; that the express determination of the courts with respect to the traffic and freight rates must now be regulated by statute so as to protect the carrier in all of its just rights and furnish it with sufficient revenue from its business to give it a proper income on the money and labor invested, and also so as to protect the people against unjust discrimination and too high rates. And the reason of this, briefly, was because the law and its remedies had been found to be unequal to meet the necessities of present business conditions.

The CHAIRMAN. May I interrupt you there?

MR. KERNAN. Certainly, sir.

The CHAIRMAN. If it is going to take you off from the thread of your argument, I will not do so.

MR. KERNAN. I think perhaps I may cover the things which you desire to mention, if you will allow me to proceed.

The CHAIRMAN. This was a matter that you would not cover, because I was going to ask you if you had given attention to the subject you there refer to, a reasonable return on capital invested, and had any information as to what that probably should be, or if there was any way of ascertaining, in the aggregate.

MR. KERNAN. I do not know but you might take perhaps the provision in our New York railroad law, which has been there since the general act in 1850. That provision is that the legislature can reduce

its rates when the clear income of a corporation is 10 per cent on the capital invested. That is our rule there and has been applied in the various investigations we had. For instance, the 5-cent fare on the elevated railroad was a matter that President Cleveland, when governor, refused to approve, although it was approved by the legislature, and we had to have an investigation of the elevated railroad under the statute, to ascertain whether they were earning 10 per cent on the capital, it being recognized that they were entitled to earnings to that extent, and there should be a reduction in the rates.

The CHAIRMAN. Would that be your own judgment from your own observation as to the measure of profits that might be just.

Mr. KERNAN. Well, no, sir. You know that has stood since 1850, and I should think now that the rate of earnings on capital which would be recognized as fair and reasonable under modern conditions would be 6 per cent on the common stock, aside from the fixed charges and bonded indebtedness. Of course that question is always complicated by the question of how much the capital actually is. Where it has been vastly watered, and where its construction account represents but a small percentage of the outstanding stocks and bonds, there always comes in the question as to whether a lower rate of remuneration would not be fair.

But I think in all investigations by bodies and commissions they seldom go back of the proposition as to the fact of what the outstanding issue of stocks and bonds is, and they usually make that the basis of the determination as to whether their rates should be reduced or not, permitting an earning on that of a reasonable amount. That becomes necessary, because if the bonds and stocks of a corporation that has been watered remained in the hands of the original holders, you might in justice reduce the earnings, but where they become scattered all through the country, in the hands of many purchasers, they lose the taint of the original wrong in the watering, and then you have another problem there; you begin then attacking innocent holders of the securities; and therefore I think that you can not do otherwise as a rule than to take the outstanding issues of stocks and bonds as a basis upon which you are to permit them to earn a return.

The CHAIRMAN. Has your investigation of this matter given you any opinion as to who is the owner of what is known as the unearned increment? Does that belong to the public or the corporation?

Mr. KERNAN. No, sir; I never have gone into that. I have always assumed, as I say, and there was great difficulty in assuming any other basis than that unearned increment represented in stocks and bonds, inasmuch as the issue of stocks and bonds have been under the authority of the people and its statutes, and that therefore you can not deprive the railroad and the railroad shareholders of the stocks and bonds of their road, and what may be called that unearned increment. It would kind of seem to me that the people had abdicated their rights to assail the issues of stocks and bonds which they themselves, under the authority of their statutes, have permitted to be made, and they have got themselves into that position where I do not think you can ever deal with the question upon any other basis than that the revenue must be permitted to be earned upon the outstanding stocks and bonds that have been authorized by the statutes.

The reasons for this legislation were because the common law and its courts and remedies were inadequate to afford the protection that

the shippers ought to have against these railroads; second, because State legislation could not reach the subject, and in the third place because competition was no longer a sufficient protection against undue preferences and high rates.

It is an old saying that competition is impossible, and can not be maintained, where combination is possible, and that has been working itself out ever since until we now see that wherever competition formerly existed it has been eliminated for the people as protection against the competing lines by the merging of securities and ownership of each other's stocks, and in other ways.

Now this act, I want to state, as you may know, was based on the English act of 1854, which was very wise in its provisions against unjust discriminations and preferences. That was very wise because it gave us for our initial legislation a guide in the construction of that act which had taken place by the English courts from 1854 down, and I always insisted that that was the only safe way to start, because if we adopted new language, we did not know where it would land us upon its construction by the courts. We took that act as a guide. Then there was the appointment of the Commission, which all supposed to have the power, which it exercised for the first ten years, to fix future rates after an investigation and full hearing given to the parties, which was accepted by the railroads and the Commission and by every one that I know of until the Supreme Court finally decided that Congress had the right to confer the judicial power on the Commission and had the right to confer upon the Commission the power to fix rates, which is a power of legislation, yet it simply had not done so in this act, and while it might be inferred from the provisions of the act, for instance the provision of the act that the Commission should investigate and if it reached the conclusion that the rates were too high should direct the carrier by an order to cease and desist from charging the rate that was found to be wrong—that while the inference might be drawn to that effect, yet the power was too great to be given by implication, and that the court would only recognize it when Congress expressly in an act conferred the power.

Now, this act was found defective in the matter of getting testimony. In the first place, after the Supreme Court of the United States held that the railroad and traffic managers who appeared before the Commission, and others, could not be compelled to testify to the facts, because they might subject themselves to punishment, it was found impossible to get them to testify, and so Congress amended the act to provide that any testimony given before the Commission by any witness should not subject that witness in any way to criminal prosecution, thus removing that obstacle from the path of the Commission; and I do not think that the Commission now needs any more power in ascertaining all the facts. That has remedied the defect of the original law, and I think that meets the suggestion which the gentleman from Alabama has frequently made, as to how you are going to find out about the secret rates.

The Commission has not any difficulty in finding out about the rate. The railroads and the shipper watch these matters very closely, and they watch each other, and they always know when a competitor is getting more allowance from a railroad than they are getting, and then, as in the case recently where the rates in the meat business were shown, they have no difficulty in acquiring all the information that is

necessary. Next came the decision of the Supreme Court holding that the Commission has not this power.

The CHAIRMAN. This move in regard to securing testimony was effected in the amendment of 1893. It is referred to in the bills here—in this last bill, which says:

But all persons so required to testify shall have the same immunity from prosecution and punishment as is provided in an act approved February eleventh, eighteen hundred and ninety-three, entitled "An act in relation to testimony before the Interstate Commerce Commission, and in cases of proceedings under or connected with an act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and amendments thereto."

Now, we come to this next difficulty, that there is no power in the Commission to prescribe a rate for the future, although the Commission find that a rate which is testified to before it in hearings is unjust and for some reason wrong, and that is the reason that a second appeal to Congress is necessary to remove that defect in the law, if it be a defect; or at least if it is not a defect, it was not intended by the Congress in the original act.

I have always supposed that it was intended that that additional power should be conferred upon the Commission, if it can be safely done with due regard to all the parties to be affected by it. There is another thing which I want to suggest to the committee and which they should bring up before the members of the Commission when they see them. I do not think this power of the Commission was ever questioned until it came up in the import-rate case and the social-circle case, which were decided in the Supreme Court of the United States. And, again, there is not any trouble about high rates. The Commission never had any difficulty about lowering rates. The shippers do not care what rates are charged. It is the relation of rates between competitors; that is the thing they want fixed.

I will give you an illustration: I bought a furnace and had it sent up to my country house, 5 miles from Utica. The freight rate was 28 cents per hundred; that, on 400 pounds, was \$1.12. Now, somebody asked me, "Was that high?" Why, taken by itself, I would not say that \$1.12 was too much to pay for bringing that furnace up there, but the rate for that furnace, at the same time, from Utica to Minneapolis was 25 cents a hundred, or 3 cents less for 1,000 miles than it was on that 5 miles. Now, you say that that does not make much difference to me, as a consumer, on one furnace. That is true. But suppose I was a furnace manufacturer at my station, trying to compete with the Utica manufacturer in supplying the Minneapolis market, I would pay from Forestport to Utica—4 miles—28 cents per hundred, and then I would have to pay the additional 25 cents per hundred to reach the Minneapolis market from there.

Why, as business is done in these days, that wipes out me as a furnace manufacturer at that point, and the result is that upon the entire line of that railroad from Utica up there was not a single furnace manufacturer. The "arbitrary," as it is called, which is the rate from a station on a single line to a competing point, was so great as to absolutely preclude men from doing business. If I was a manufacturer at Forestport I would not care whether the rate was 50 cents to Minneapolis or 25 cents; but what I would want to have established would be the relation which my rate would bear to my competitor's at Utica. If I should be charged 3 or 4 cents a hundred miles, that is all right;

but if I should be required to pay 3 or 4 cents for that short haul to reach the customer, that, of course, wipes me out.

You will find in 99 cases out of 100 that the complaint before the Commissioners has not been that the rates are too high. It is all a question of the relation of the rates to be established, and not only between all sorts of competitors reaching common markets in this country, but also abroad. That is the question, and that is why you have got to have a commission, and that is why it has to have power. You can see how difficult it is for courts to deal with that question. There are but six classes of freights.

Mr. MANN. In the case that you stated how would you remedy that? Increase the rate from Utica to Minneapolis and make it 25 cents higher, or make the rate from Forestport 2 or 3 cents a hundred?

Mr. KERNAN. I think it should be both ways there. I think the rate from Utica ought to be higher, and the other way lower.

Mr. MANN. You think that is to the interest of the people of Minneapolis, to increase the rate?

Mr. KERNAN. I do not think the combined rate ought to be very much greater, and I think railroads ought to pay and I think it is good business, and I think if you will listen to some suggestions which I have to make that you will see why I think that an extraordinarily low rate, although it is presumed to be an advantage, if it is not remunerative to the railroad is not a benefit to any consumer or producer.

Mr. MANN. That is a matter of argument. Take the case you cited; how would you remedy that? You have given that a great deal of study; what rate would you make to remedy that?

Mr. KERNAN. I would make the Forestport rate—if the railroad maintained the rate of 25 cents around as its rate—I would add to the Forestport rate a fair addition for the 29-mile haul, comparatively speaking; not pro rata, but a fair addition.

Mr. MANN. Well, that is fair; but tell us how much.

Mr. KERNAN. Now, that is just the difficulty.

Mr. MANN. That is just what I am getting at; what would be the rate that you would make, the local rate, between Forestport and Utica, on furnaces?

Mr. KERNAN. I should want to hear all the railroad traffic managers had to say, and to take into consideration the capitalization, the business and earnings of that line, and in that way reach a conclusion which would afford the railroad a fair return for the service rendered, but it would involve so many elements before the question could be considered that no man could possibly—

Mr. MANN. But you think that the Interstate Commerce Commission, with the consideration of a few days' hearings, would be able to tell better than the railroads, after fifty years' experience, what the rate should be?

Mr. KERNAN. I do not say that. It would be better done by the railroad company if the railroad company acted judicially in the matter; but every man acts for his own interests in the matter, and therefore the railroad manager, in considering the question, does like a great many of us. He looks at one side. And I never knew but one railroad man in this country who was able to take in both sides of the question.

Mr. MANN. Is it not to the interest of the railroad companies to increase the manufacturing interests on their lines?

Mr. KERNAN. You would suppose so.

Mr. MANN. Is it not?

Mr. KERNAN. Yes, sir, it is; and it is bad policy if they do not do it; and yet you would be surprised to go up and down lines which I could point out in New York State to see how absolutely blind they are to that.

Mr. MANN. With all your knowledge of railroad rates—and you have given more study than anybody on the Interstate Commerce Commission to them—

Mr. KERNAN. Oh, no, sir.

Mr. MANN (continuing). Or any man in the country—

Mr. KERNAN. I do not think so.

Mr. MANN (continuing). I will ask you, leaving out Forestport altogether, you are not able to tell what would be the proper rate from Minneapolis to Utica?

Mr. KERNAN. Not unless I had all the facts. I have not got them. I never bothered about my little rate. This is just an illustration of the difficulties, and one of those relative things that has got to be considered and determined.

For instance, you take the question of two farmers living 100 miles from Chicago, one on one railroad and one on another. They are both competitors for the foreign and domestic market. They are on different lines, and those lines are in different States. Now, the farmer at one point is charged for carrying grain to Chicago 3 cents a bushel. The farmer on the other road is charged 1½ cents a bushel. Now, that difference of 1½ cents a bushel, you see, wipes out to a certain extent the business of the farmer who has to pay 3 cents. You can not deal with that situation any way except through the interstate-commerce law, which can bring both of these rates before it and enter into a consideration of these relative rates, and fix them in the proper relations toward each other.

It may be that the interests of one road, and the form of business of one road, may permit a higher rate. If that is so it will have to stand. But it may be that of these rates one is higher and the other lower than it ought to be. Those things have to be met by the power of somebody who has power to fix relative rates, and it is relative rates in this country that are troublesome.

Of course, on the 1st of January, 1900, the railroads changed rates on 854 different articles, and they lowered them on 6 and raised them on the rest of the articles. The increases were from 100 per cent down to 15 per cent. The average was 25 per cent.

Now, after the long period of depression that the railroads have been suffering from I do not think that was an excessive rise in the rates, and the only thing in those rates is that it should be considered by somebody with authority and ability and training to go into the consideration of the relative fairness as between competitors at different points and upon different roads.

In this bill the first section seems to be all right, and there certainly can not be any objection to it. It provides that any carrier who departs from the published rate, or any person who procures or solicits any such departure from the published rates, shall be deemed guilty of a misdemeanor and fined. I want to say here that this act remedies

one thing in the interstate-commerce act which has been a serious obstruction to the carrying out of the provisions of the act, and which meets something which was suggested here the other day. It removes the punishment penalty. If you have a punishment penalty you can not get any information; it is utterly futile. All you get in this act is a money fine, and I think that is a vast improvement in the act.

The CHAIRMAN. What would you say to this remedy for that evil: In case of a secret rate or of a rebate, to compel the company to continue that rate to all other shippers on its line for twelve months?

Mr. KERNAN. It might bankrupt the company. You see you have got to remember—

The CHAIRMAN. It would operate as a fine, and it would operate to give a great many men an incentive to enforce the law and to discover offenses.

Mr. KERNAN. That is true, but everything tends to show me that no remedy is wise in the public interest which would tend to deprive a railroad of sufficient revenue to maintain itself, and to make a fair earning. That is the best public policy for this country.

The CHAIRMAN. Yes, sir; but would not this result: All of these violations of the law are through human agencies, appointed ultimately by the board of directors. Would any man commit this offense where such a penalty was staring his company in the face? He would not last a minute with that directory. He would know that he lost his job instantly.

Mr. KERNAN. Well, I do not know. We find the policy of agents and subordinates taking business at any rate they can—

The CHAIRMAN. Now, there would be some reason for this. They are required to establish a just rate. The very fact that they have established this rate would operate as an estoppel against the complaint; that it is just and right; that they are right.

Mr. KERNAN. I do not believe it is good policy to adopt any remedy that compels railroads to do service for nothing or without remuneration. I do not think it is good policy.

The CHAIRMAN. You are not compelling them to do it. It is of their own volition?

Mr. KERNAN. It is not good policy to permit it, from a public standpoint, without any regard to their pocketbooks. A railroad, to be prosperous and successful, to keep up to the times, and give its shippers facilities, must have earnings to pay its fixed charges and afford a return on its capital.

The CHAIRMAN. Yes.

Mr. KERNAN. And any penalty which would continue to give a cut rate, which would involve a loss to the road, would be bad public policy, even if the railroad would be willing to do it. I think all legislation should be directed to preventing cut rates, not only from the standpoint of the people, but from the point of the benefit of the railroad, looking at it from the standpoint of the public interests. I believe that is sound policy and have always believed it. Every effort should be made to prevent railroads cutting below the rates at all. I do not believe there is any benefit in cut rates.

Mr. MANN. If you will permit me, I asked one of these other witnesses yesterday a question which I should like to ask you. You state that this bill provides for the punishment of any shipper who would maintain cut rates. I have not been able to find that.

Mr. KERNAN. It is on page 2:

Any person, whether an employee or a principal, or a member of a firm or company, or an employee, agent, or officer of a corporation, for any of whom, as consignor or consignee, any carrier subject to the provisions of this act shall transport property, who shall knowingly, by false description, false weight, or false representation of the contents of any package, or by any other fraudulent means obtain or attempt to obtain the transportation of property, with or without the collusion of the carrier, or any of its employees, agents, or representatives for a less compensation than that prescribed by the published tariffs or schedules of rates in force at the time shall be deemed guilty of a misdemeanor.

Mr. MANN. That does not answer my question at all. That only applies to people who obtain lower rates by false representations; for instance, as to what the property is, or as to classification.

Mr. KERNAN (reading): "Or any other fraudulent means."

Mr. MANN. This would not apply at all.

Mr. KERNAN. You give a different construction to it. I assume that that does reach the case of cutting rates, any device or attempt to secure a rate lower than the published rate.

Mr. MANN. Do you think that would cover the case of a shipper who obtains by crime, without any fraud so far as the representations are concerned, a lower rate than the schedule rate?

Mr. KERNAN. I have not given that construction to it.

Mr. MANN. I do not believe you would, if you were on the bench. That section will cover a case where a man brings a box of goods and represents them as being in one classification when they are another thing and in another classification, which is in fraud of the law.

Mr. COOMBS. No, sir; it is a violation of the law whether it is a fraud or not. It does not say misrepresentations.

Mr. KERNAN. It is against and in fraud of the law for the carrier to take business below the published tariff, is it not?

Mr. COOMBS. Fraud has a penal significance.

Mr. MANN. Obtaining a rate by fraudulent means does not apply to a violation of the law.

Mr. KERNAN. Take the first section:

Every carrier, every lessee, trustee, receiver, officer, agent, or representative of a carrier who shall transport or offer to transport traffic subject to this act at any other rate or upon any other terms and conditions than are duly published in accordance with the provisions of the act, or who, by the payment of any rebate or by any other device, departs from such published rate in the transportation of such traffic, or who transports such traffic without having first published a tariff applicable to the same, agreeably to the provisions of the act, and any person who procures or solicits to be done, or assists, aids, or abets in the doing of any one of the aforesaid acts shall be deemed guilty of a misdemeanor.

How about that reaching the shipper who asks for a cut rate? That is the first section, right at the top of the page.

The CHAIRMAN. How would that apply to this condition? Suppose I go and take a box to a station agent in my town. I do not know anything about the rate, and I say "what will it cost me to ship this to Chicago?" He gives me the rate, and I pay the freight. I do not know anything about the relation of that rate to the published rate. Now, suppose that rate is below the published rate—

Mr. KERNAN. Oh, I think the ordinary rule as to criminal prosecutions would apply there. Violations of any act that imposes a penalty must be willful acts, and done with knowledge, and that would be an exception. This act says:

Any person who procures or solicits to be done, or assists, aids, or abets in the doing of any one of the aforesaid acts, shall be deemed guilty of a misdemeanor.

It seems to me that covers the question.

Mr. COOMBS. Then everybody is charged with a knowledge of what the tariff is?

Mr. KERNAN. You mean that in a criminal action every man who commits an act is guilty?

Mr. COOMBS. Yes, sir.

Mr. KERNAN. That does not apply in a criminal case. There must be a willful violation.

Mr. COOMBS. I know; but he is charged, and ignorance is no excuse under the law.

Mr. KERNAN. We would all of us be jailed every day if that were not so.

Mr. COOMBS. You can not plead ignorance of the law, and that principle is applied every day in the law.

Mr. KERNAN. I think that ignorance of the law is always a defense in a criminal action. I think it is never a defense in civil actions or where remedies are involved.

Mr. COOMBS. You are mistaken about that. Before a jury it might be something in extenuation, something that they might take into consideration, but that is never an excuse or a justification. In criminal cases as in civil cases a man is charged with the knowledge of the existing law.

Mr. KERNAN. That may be true, but my understanding of the law is that a man is never punishable for the violation of a criminal statute unless it is done willfully; and if it is done in ignorance of the law, the act is not criminal.

Mr. MANN. Take the case of the transportation from Utica to Forestport of that furnace.

Mr. KERNAN. Yes, sir.

Mr. MANN. Suppose you had thought that rate was a little high, and you had asked the railroad company if it could not charge a lower rate, and the agent had given you a lower rate, a little below the schedule, for instance, a dollar instead of a dollar and a half. Under this section you would have been fined \$5,000; because there is no fine less than \$5,000.

Mr. KERNAN. If it had been shown that I did that with full knowledge of the law and its provisions——

Mr. MANN. You do not think——

Mr. KERNAN (continuing). Then I think I would be liable.

Mr. MANN. But you do not think it would be necessary to show that you had full knowledge of the law? Of course there is not a railroad agent in the world who has full knowledge of the law. The courts even do not have that.

Mr. KERNAN. Then when prosecutions took place they would be discharged. It is only for willful violations of the act.

Mr. MANN. You kick on the rate of \$1.12 and get a rate of \$1, and thereupon you are prosecuted under this section. If it applies to that case, they must fine you \$5,000; no less fine can be imposed. Is not that rather hard?

Mr. KERNAN. If you are right and I am wrong in the application of criminal statutes, that is hard. You are mistaken about that. I do not think the violation of a criminal statute is ever punishable unless it is willful.

Mr. MANN. Then you think that in order to convict a man under

this provision the prosecuting officer must show that the man had knowledge of the law before he committed the offense?

Mr. KERNAN. No, sir; I think the prisoner is presumed in the first instance to have had knowledge of the law; every man is presumed to have that, but I think he may show in defense his ignorance of it. That is a matter of defense. The onus is not on the district attorney to show that the man knew the law. The onus is upon the prisoner to show that it was done in ignorance.

The CHAIRMAN. That is only in mitigation of the punishment. That would be after the trial.

Mr. KERNAN. No, sir; that is on the trial.

The CHAIRMAN. It would mitigate matters after the trial.

Mr. ADAMSON. Ignorance of the law can not acquit a man.

Mr. KERNAN. Ignorance of the law or the statute will acquit a man in a criminal prosecution.

Mr. ADAMSON. That is a new law.

Mr. KERNAN. I maintain that is the law.

Mr. COOMBS. In what State is that in vogue?

Mr. TOMPKINS. How can a man have ignorance of the law when he is assumed to have knowledge of it?

Mr. KERNAN. Take the milk case—

Mr. MANN. Nobody could know whether he had knowledge of the law except the man himself, and all he would have to do would be to come in and swear that he did not have it, and he would go free.

Mr. KERNAN. In the milk case, the Murtagh case, of the Verona cheese factory, there was a penalty for watering milk, and I was employed in bringing the action of the Verona cheese factory against this man, and we proved our case and he proved that the water was put in in his absence by his wife and his children, and that he drew the pay for it from the factory, and we claimed that he was liable under the statute, inasmuch as the act of the agent in charge of the business is the act of the principal, and therefore he was liable individually under the act.

The case went to the court of appeals, and they reversed it on the ground that under the statute, notwithstanding he was responsible for the acts done in that case by the agents of the business, he could only be charged by showing his actual knowledge of the violation.

Mr. MANN. Of the fact?

Mr. COOMBS. Not of the law.

Mr. KERNAN. Actual knowledge of the violation.

Mr. COOMBS. That would make him an accessory. He had to have a knowledge of the offense and not of the law.

Mr. KERNAN. It goes to show that he had to have not only knowledge of the fact and the statute, but even on proof of a violation of the statute absence of intent is an excuse in a criminal prosecution.

Mr. COOMBS. The intent goes to the ingredients of the defense.

Mr. KERNAN. If it goes to the ingredients of the offense, then I think it ought to go to the extent of knowledge and willfulness of the violation.

I notice here you might amend that section in that way. It might be provided that the carrier can not be punished unless he willfully violates the law.

Mr. COOMBS. Strike out "willfully" and put in "unlawfully."

Mr. KERNAN. In this first section you can put in there "Any per-

son who willfully" commits these acts. That would remedy that defect, if I am wrong and you are right, and I presume you are, about this other proposition.

Now, the other thing that I want to call attention to which is a very serious defect in the original act, is remedied here. The provision is:

Every corporation which shall be guilty of any act or omission, which if done by an individual would be a misdemeanor under the provisions of this act, shall be deemed guilty of such misdemeanor and shall be subject to the same penalty which is provided against the individual.

Under the present interstate-commerce act the corporation goes scot free. It is not indictable for the offense, and the result is that all the efforts of the Commission have to be directed toward the subagents and employees who do these acts which, under the interstate-commerce act, are punishable.

That has always been a defect in the law, and this amendment provides that corporations should be the ones responsible for the acts, where the acts are done by them or their agents; that they should be made liable and no protection given them. The result of that is that you can not convict the agent before a jury. He can turn around and swear that the corporation did it under its directions and rules, and so forth, and it reaped all the benefit.

Now, that is a good provision, and the next which is proposed, the last to be considered, is giving the Commission the power—

to determine what rate, relation of rates, classification, or other practice should be observed in the future in order to correct the wrong found to exist, and it shall order said defendants to observe the same.

That is to be after a full hearing; "after full hearing had." Of course that should be so. That is right. The hearing should be full and complete before there should be any order entered by which any rate should be changed for the future. And I intend to say more than I have about that; I think that was the original intention of the original act. I know that our Commissioners who appeared before Senator Cullom's committee, and who had been serving for years before State boards who had recommendatory powers, pointed out that our experience had been such as to show that at first, when a commission is new, or in a small State where there is not too much vast railroad business for it to consider, so that its action is lost sight of, these recommendations have power. In Massachusetts they had force for a number of years, and when I was on the New York commission as the first chairman, the first four years of its existence, the first question which came up and which we decided about rates, and in which we reduced the rate to some extent, the newspapers were full of it.

It was a new body, and its decisions were watched and given prominence, and talked about, and there was a focus of public interest upon the railroads upon that subject—as to whether they observed or did not observe the findings of the Commission. If the finding was right the public sustained it, and the railroad was under that kind of bias of public opinion that made them observe it. But after a time we found that the Commission ceased to be an object of much interest in regard to this question; that its recommendations lost power, and now they do not amount to anything there or anywhere else. There is no regard paid to them whatever.

Mr. TOMPKINS. Are you through on that point?

Mr. KERNAN. Yes, sir.

Mr. TOMPKINS. Inasmuch as the general debate must be closed on the floor of the House in a very short time on an important measure, I move that we now go into recess until to-morrow morning at half past 10 at this point.

(The motion was seconded, put by the chairman, and carried.)

Thereupon, at 11.10 a. m., the committee adjourned until to-morrow, April 19, 1902, at 10.30 o'clock a. m.

SATURDAY, *April 19, 1902.*

The committee met at 10.30 o'clock, a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. JOHN D. KERNAN—Continued.

Mr. Chairman, I want to say that I have looked at the question of law raised by Mr. Adamson yesterday, and he is right about that; that mistake of law does not excuse the doing of a prohibited act. I ought to have said that I have had nothing to do in my life with criminal law and I do not pretend to be an expert on that question. But the distinction in our New York courts seems to be this—and there are a good many decisions on this. In the case of *Gardner v. the People* (62 Court of Appeals), the court uses this language:

The defendants made a mistake of law. Such mistakes do not excuse the commission of prohibited acts. The rule on the subject appears to be that in acts mala in se the intent governed; but in those mala prohibite the only inquiry is, Has the law been violated? The act prohibited must be intentionally done. A mistake as to the fact of doing the act will excuse the party; but if the act is intentionally done the statute declares it a misdemeanor, irrespective of the motive or intent.

I had in my mind that in some instances there were prosecutions of crime where the knowledge of the law had been a question found to be necessary in order to constitute the offense; but those apply only to offenses that are offenses per se and not statutory.

Where there is a statute on the subject the rule seems to be that knowledge of that statute is presumed and the violation of it, regardless of knowledge of the statute, is an offense.

Now, that leads me to suggest that in that first clause there it would be wise to provide that that penalty of not less than \$5,000 or more than \$10,000 should only be imposed on the corporation, and that that should be amended so as to provide that any agent of a carrier or any shipper; that the penalty upon him should be only within the discretion of the court, not exceeding a certain amount, not requiring the court to impose any definite amount. That, you see, would permit a court in all cases of that character to take into consideration all circumstances that went to mitigate the offense, and to show that the party violated the statute, perhaps, inadvertently, and thus to graduate the fine down to a nominal matter.

It seems to me with that amendment to this section it would be all right, and would meet the difficulty and objection presented by Mr. Mann to the effect that the imposition of that penalty of \$5,000, it being fixed, as inexorable, either upon an innocent freight agent, perhaps, or an innocent shipper, or one where the circumstances show no

particular intent to violate the law, that that would be right and make it perfectly fair.

Another thing. Your honor suggested yesterday that perhaps a remedy might be secured by requiring the carrier to continue the cut rate as a public rate, and if that could be confined in its operations to results to the offending carrier, it might, perhaps, afford a remedy; but the difficulty about that is that the cut rate imposed upon one competing railroad requires all of its competitors to make the same rate.

The result would be you would be compelling innocent parties in that case to conform to the cut rate for which they were in no way responsible.

Now, another thing in this bill which is very important—

The CHAIRMAN. How is that operated? I supposed that all carriers from common points do substantially agree upon a rate?

Mr. KERNAN. Yes, sir.

The CHAIRMAN. I think they must do that—

Mr. KERNAN. Yes, sir.

The CHAIRMAN (continuing). In making up their rate tables?

Mr. KERNAN. Yes, sir.

The CHAIRMAN. Are there cases in your judgment where any given company would prefer a lower rate than that and, preferring it, obtain it under this method? If they were content with a cut rate that would be imposed upon them perpetually by the statute, if they would be willing to cut the rate for the purpose of getting that particular rate, why not agree to it in the first instance?

Mr. KERNAN. What is that, sir?

The CHAIRMAN. Why not agree to it with their competitors in the first instance?

Mr. KERNAN. There would be no object in doing that, because then the cut rate being on all of the lines would afford no advantage to one over the other.

The CHAIRMAN. That was what I thought.

Mr. KERNAN. The object of the cut rate made by a road is always to get under its competitors and get business, and if the cut rate was agreed upon by all the roads there would be no advantage in it, you see.

The CHAIRMAN. Do you suppose in the ordinary practice of cutting rates, the cut rate is one that the company could afford to maintain for all of its business?

Mr. KERNAN. As a rule the cut rate is not regarded as remunerative in itself. That is the general railroad custom about it. It is not regarded that rates cut for the purpose of getting business are remunerative, it is not regarded that they will be; it is simply to get the traffic, and having got it hoping to maintain it and then eventually get something out of it.

I want to say another thing about the first section in reference to these offenses, there on page 2, line 2, you might insert "knowingly and willfully," so it will read, "Any person who knowingly and willfully procures or solicits to be done," etc. That would perhaps prevent that section from punishing innocent persons. That might be a suggestion you might think about; whether it might not be well to insert "knowingly and willfully."

Another very important provision of this act is this: The Commission is now authorized to take testimony, and its findings are prima

facie evidence in a court, but invariably when you go into a court with the testimony before the Commission, and the findings of the Commission—I have had it myself a half a dozen times in my own experience—the railroad apparently pays no attention to the fact that the testimony has been taken before the Commission on the part of the complainant.

It withholds its testimony before the Commission and does not give any, in the hopes the Commission will make some mistake of facts or will not get at the facts and that this order will not be of any use. The Supreme Court of the United States has commented upon it in one of its decisions, and has said that that is a very serious evil, and that in some way the railroads ought to be compelled to display their full hand before the Commission. At present when you go into court with the findings of the Commission and the testimony of the railroad company comes in and tries to fight the case on affidavits, which is the most unsatisfactory way of trying one of those issues; you get into conflicts of affidavits you can not have an opportunity to cross-examine the affiant, and thus all sorts of difficulties as to the evidence arise.

In one case I had the most voluminous affidavits come in on behalf of the railroad as to facts, none of which had been presented before the Commission at all. We were in a position where we had to make affidavits, and thus the case became a fight over affidavits, which is an unsatisfactory way to try a case.

This provides that in case of the railroad appearing before the court and desiring more testimony, that then it shall be sent back to the Commission to complete the record. In other words, the place where part of the testimony is taken is the place where the entire testimony should be completed in order that the sequence of facts and the omission of things that have been already allowed, and all that, may be somewhat controlled.

The CHAIRMAN. Right there, if you will allow me. In the procedure, in order to bring about that order to the Commission for additional testimony, you would require the defaulting party or the railroad to make such a showing as the court would require in a motion for a new trial on newly discovered testimony? You would require some such procedure as that?

Mr. KERNAN. I do not think I would make the rule as stringent as that.

The CHAIRMAN. What procedure would be necessary in order to secure the taking of additional testimony?

Mr. KERNAN. Nothing, except a mere desire to take further testimony. I would not make it the rule that applies to cases as to newly discovered testimony. The rule there is that the party must not only show that the testimony has been newly discovered, but that with ordinary diligence it could not be produced in the first instance. If you apply that rule here, railroads might be shut out because—well, they might not choose to attend the hearing of the Commission and put in testimony. I would not for that reason cut them off. We will not accomplish anything in the end of value unless we have all of the facts presented before the Commission and the court to get at what is right about it.

An order based upon personal testimony, an order which is, therefore, wrong in not being comprehensive enough to cover the situation, could not do anybody any good, even although it be one giving a lower

rate or something of the kind. You can not make laws of that kind that operate to control the great laws of supply and demand in trade and rates unless they are based absolutely on all the facts and are right. And therefore there is no advantage in prescribing a rule of procedure which shall cut anybody off anywhere.

Let me call your attention to the language of this: "In case either party desires to submit further testimony," and such testimony could reasonably have been perfected before the Commission, it may instruct the Commission then to certify up that testimony. So it leaves it, if the railroad desires to present more testimony; they do not have to make a case out except to show it is desired.

The CHAIRMAN. In the taking of the testimony before the Commission, would you give them the powers of a court, or simply of a commission taking depositions?

Mr. KERNAN. I would not change the law in that respect as it now exists.

The CHAIRMAN. But what I want to get at is, in your opinion, whether it is given functions in the taking of testimony that a court has—which may exclude, which may pass upon the competency, and all such questions as that—while a commissioner would not; he would simply have to record what was proposed, with the objections.

Mr. KERNAN. Yes; in other words, would you make the Commission simply in the position of a master, without power to rule?

The CHAIRMAN. Yes.

Mr. KERNAN. Without power to report up. No, you can not practically do that. The Commission must have the power to determine as to the competency of testimony. Otherwise do you not see that the conclusion of the Commission would be based upon testimony which might thereafter, you know, be struck out by the court, and you would have no basis for your findings of the Commission. But, of course, in this method suggested and under the interstate-commerce act I assume that the testimony must be competent; it must conform to the rules of law; and in the review by the court if it is found that the Commission has erred in those respects, that destroys the efficiency of the order that the Commission has made, of course, and there are other questions; the question, for instance, of contempt and the refusal to answer questions, and such things, that the Commission has no power to punish under the present procedure.

The question had to be referred to the court, and the court has to determine whether or not the testimony shall be given or be excluded. It determines whether the witness shall be compelled to answer.

The CHAIRMAN. Would you change that?

Mr. KERNAN. No, sir; I do not think so. I do not think it is necessary to change the rule. I think the punishment—

The CHAIRMAN. Is it possible now for any tribunal to secure that full amount of testimony that enables them to act in important matters without they have the power to compel the attendance of witnesses and to punish them?

Mr. KERNAN. They have the power now to compel the attendance of witnesses under the amendment to the act of 1893. The Commission has the power to compel the attendance of witnesses and compel the answering of questions. That is in the way I suggest. In case of refusal, appealing to the court and getting the process of the court to compel it. It would not do to invest the Commission with powers

of the court to punish for contempt or to exercise those powers of compelling the attendance of witnesses, punishing them for not coming or refusing to answer questions; but whenever a situation of that kind arises under the interstate-commerce act, that question is properly referred to the court, and the court determines it; so it does not leave the Commission to act in those respects as a court. I do not think that would do.

The CHAIRMAN. In the procurement of that testimony what power would you give to the Commission? What power would you give as to the payment of costs of witness fees?

Mr. KERNAN. That is provided for under the present act. The Commission has the power to have subpoenas issued and witnesses subpoenaed, I presume, out of its appropriations. I know, as a rule, that in the summoning of witnesses—I know it has been so in the cases I have had before the Commission—no process is required; it is simply on request of the Commission that the witnesses have attended. And counsel for railroads secure an attendance of such witnesses as they desire. So in that respect I do not think there is any difficulty.

Now, with reference to the next section. There is one thing there, the filing of a petition for review.

The CHAIRMAN. Where do you read from?

Mr. KERNAN. On page 6. This filing of a petition to review an order shall of itself suspend the effect of such order for thirty days. I would suggest that you strike out the rest of the language there, which might interfere with the ordinary jurisdiction of the court. I should be inclined to put that sixty days instead of thirty days. I think in those respects the act should be liberal; that if the Commission has the power to make this order, the mere filing of the petition should suspend it at least sixty days, to give the railroad an opportunity to determine whether to conform or apply to the court for a stay or whatever else it might think proper to do. I think the proceedings then of ordinary jurisdiction courts of the United States and their right to grant a stay pending appeal where there is a question of any importance involved in the matter presented before them is all the ample and full protection against any order of this Commission that ever could be made, and might be perhaps unjust to the railroads.

I do not know that I want to go further than that. Going through the details of this act it does not seem to me to need any amendment or changes except those I have suggested. There is one thing that might be thought about; that is on page 8, line 10:

If a carrier refuse to obey an order which is obligatory upon it as above.

The query in my mind as to that is this: At the time that an order is made, that in the end it turns out to be an unlawful order, does that language impose upon the carrier obedience to the order between the time it is made and the time it is declared to be illegal, or does that imply that it is the duty of the carrier to obey that order in case it is a lawful order? I assume that it means a lawful order; but if not, I suggest to the committee whether that ought to be made clear by putting that word in there, so it will read "a lawful order."

Now, for instance, take in our ordinary court practice. A man procures an injunction. It is well settled, I think, that it is the duty of the party against whom it is issued to obey it, even though in the end it may turn out to be unlawful and reversed upon appeal. Under our

court practice in New York an injunction has to be obeyed while it stands, until it is reversed. And I suggest in reference to this matter whether that language should read in that way. I do not think myself there is any particular occasion for changing the language of the act, because it seems to me all the time as though if there be in an order made by a commission any element of reasonable doubt, even as to its validity, that if you leave the protection of the United States court unimpaired, and they are right to suspend a stay pending appeal, first limiting the time to sixty days before it takes effect, that then you put the carriers in a position where they will be abundantly protected against the error of any order that may be made by the Commission.

Mr. MANN. I do not quite understand the distinction you make between a lawful order and an illegal order in reference to this.

Mr. KERNAN. The distinction? It is this: The Commission makes an order. Suppose the carrier believes, and ultimately establishes in the courts, that that order is an unlawful order made without jurisdiction; if you please, without sufficient facts to sustain it. Under the language here, would the carrier be obliged to obey it between the time it is made by the Commission and the time it is declared to be illegal by the court?

Mr. MANN. But it says an order which is obligatory upon it as above.

Mr. KERNAN. Does that imply all through a lawful order?

Mr. MANN. It implies an order which is not stayed by the court.

Mr. KERNAN. Exactly. Then it would be true that even although the order turned out in the end to be unlawful that between the time it is made and the time the court declares it to be illegal, unless stated by the court, the carrier would have to obey it.

Mr. MANN. You mean if the order is made and the railroads do not appeal to the court for review—

Mr. KERNAN. That they must obey it, even although it turned out in the end to be unlawful.

Mr. MANN. Under your idea they would have the right not to file a bill to review but simply take the position that it is unlawful and refuse to obey it?

Mr. KERNAN. Until proceedings were taken to punish them, and then go into court and make their defense.

Mr. MANN. How would those proceedings be taken?

Mr. KERNAN. The Commission would apply to the court for a mandamus to compel the railroad to obey the order. The railroad would come and say, "We concede the order was made, but we claim it was unlawful."

Mr. MANN. That would be the case under this section. If it is an unlawful order it is not obligatory—

Mr. KERNAN. If that implies a lawful order, as I think it does, then that is true.

Mr. MANN. Undoubtedly if the court did not have jurisdiction and has not made a lawful order it has not made an order that is obligatory.

Mr. KERNAN. That is generally true, you know. I think it is generally true that a man can refuse to obey an order of the court and defend himself in the end when he is brought up on it upon the ground that it is not lawful.

The CHAIRMAN. That would change the entire prescribed procedure

of this act. The act provides that it shall go into force at once or within thirty days. Then if there is no appeal it is enforced for two years. The railroad company has the power to have that reviewed, however, the law provides for that; it makes provision as to the testimony and all of that. Now, if this procedure is admissible that you are now speaking of it gives them a second remedy. They will just stand pat, refuse obedience; then when the Commission takes the initiative and goes to the court asking to have this order enforced, they come up and raise the whole question by asserting that the order is illegal.

Mr. KERNAN. Yes. Well, I only make this suggestion because it was suggested to me by a railroad gentleman, and I said "I am perfectly willing to suggest anything that occurs on this question." I do not think myself the language of the act needs to be changed. I think that even although the order be unlawful the remedy provided is sufficient. The permitting of the filing of a bill in equity and permitting the court to protect the railroad by granting a stay in case there be a doubt about the question. That is all the remedy the railroad needs to protect it against the defect of any error in these orders.

Mr. MANN. Can you imagine a case where under the powers granted to this Commission under this bill an order issued by them would be unlawful, in the sense they did not have the jurisdiction.

Mr. KERNAN. I can imagine that a commission might give an order without giving a hearing. Some commission might do that. This bill says they can not give an order until after a full hearing. Suppose they should make an order without a full hearing; I do not think that would be lawful under this act.

Mr. MANN. But the railroad comes, after an order is issued, and raises the question as to whether the court had had a full hearing when it decided in its order that they had had a full hearing.

Mr. KERNAN. That is, whether the recital in the order is conclusive proof of the fact of the hearing. I think they could raise that question of fact, sir. I do not think recitals in an order are conclusive. Recitals in a judgment of jurisdiction are not conclusive. That comes up in all these questions as to the validity of divorces. The recitals in them are usually sufficient, and that is presumptive of the fact; but I do not understand in attacking the validity of a judgment of that kind that you can not always raise the question of whether, while the facts recited are presumably true, they are true in fact.

I want to say, Mr. Mann, that I have already referred to that question that you suggested yesterday about a mistake of law, and you are right about it. I want to excuse myself, however, by saying that I have had nothing to do with criminal law and I do not know anything about it.

I would also say that I suggested, in connection with the subject of the mistake of law, that it might be well to amend that first section, because of the fact that you suggested, so as to provide, in line 2, page 2, that any person who "willfully and knowingly" procures, etc., and also to provide that that minimum penalty of \$5,000 should only be imposable upon the corporation, and as to the agent or as to the person—the shipper—the penalty should be entirely within the discretion of the court, not to exceed a certain amount.

That you see would permit the court to take into consideration the circumstances in mitigation of the offense, such as the fact that the party was innocent and did not know and did not intend to offend, in

such case to impose nothing over a nominal fine, from \$1 up to the maximum amount.

Mr. ADAMSON. I want to ask you one question before you retire.

Mr. KERNAN. All right, sir.

Mr. ADAMSON. It is no theory or hobby of mine that I advance; but as a lawyer I ask you this question. Most of the gentlemen appearing before us have been laymen, and they say that the great trouble is not that they are dissatisfied with the fairness and judgment of the Commission; but the law's delays are such that they can not get the benefit of an adjudication for years and years after the findings have been had. I want to ask you if you had thought any on the feasibility of this suggestion, and what you think of it: That when the Commission has investigated and made a finding, that that finding be certified to the convenient Federal court, and such proceedings as the party wants to have go right on without any further trouble or delay. If there is to be any resistance on the part of the road, that it be made the judgment of the court, and enforced, and executed; if the roads want to carry it further, let them proceed. What do you think of that suggestion?

Mr. KERNAN. I am not prepared at the moment to say that might not be a vast improvement over the present situation and condition.

Mr. ADAMSON. Are there any constitutional difficulties in the way of that idea, first?

Mr. KERNAN. I do not at the moment think of any. I do not see that there would be any constitutional or other objection to permitting the certification to the court of the proceedings before the Commission—the testimony and order of the Commission—and then permitting the court to render a judgment upon it, either adopting the conclusions of the Commission and entering an absolute order of judgment, or else of not doing so in case it found error. The only thing I can say about that is that the vast amount of business that would be thrown upon the court in that way would—

Mr. ADAMSON. My question is when a report is certified from the Commission it is a preferred case and it has to be put at the head of the calendar of the court.

Mr. TOMPKINS. It would still do what he said—increase the volume of business in the court very materially.

Mr. KERNAN. Of course I think, as a practical question, the circuit courts of the United States would not do any other business except to spend their time on these cases.

Mr. ADAMSON. Other gentlemen who have been here have prophesied that if the remedy could be made easier the business would decrease instead of increase; that if you found you had power to bring cases to trial it would lessen the number of cases.

Mr. KERNAN. Your courts, of course, might be open all the time for the hearing of that kind of questions, the matter would be presented immediately to the circuit court for hearing; but everybody who knows anything about United States courts knows how behind they are and how long it takes to get anything through.

Mr. ADAMSON. There is an easy remedy for congestion in the courts. It is the duty of every civilized country to establish courts enough to do the business.

Mr. KERNAN. In New York City this winter the Bar Association and the judiciary committee of the legislature have been working on the

question of how to clear the calendars of the court; what devices to adopt; whether to create more judges or let the governor send country judges to the city, or let our county judges be sent to the city to discharge the duties of circuit court judges, or what to do. So far no available method has been found either by the courts, by the lawyers, or by the legislature. It seems to me what you suggest may be to some extent practicable and would be an improvement over present conditions. Yet when you come to consider that in the vast majority of decisions made by the Commission the order is promulgated and accepted and put into effect, and that must require that before that is done it must go to the court, and then, of course, jurisdiction must be acquired by the court by the issuance of process or notice of some kind—

Mr. ADAMSON. Oh, no; my suggestion is that you might carry it there and make it the judgment of the court; that the court might accept the procedure of the Commission.

Mr. KERNAN. Of course you could not do that without giving everybody concerned a hearing in the court. You would have to take time enough to get everybody in.

The CHAIRMAN. Suppose that there has been a full hearing before the Commission and parties have been there; why could you not by law authorize the court to file that within so many days, and that within so many days after that filing—that is on a day, the tenth day after that filing, the court shall proceed; let that serve as notice and if anybody wants to appear let them appear.

Mr. ADAMSON. There is an analogy of that, Mr. Chairman, in almost every case in the State court where a commission is appointed for any purpose. Such commissions go out and investigate and report, and if the court pleases it makes the judgment of the commission the judgment of the court. That is so in cases of alimony and dower and land lines and all that, and many other cases.

Mr. KERNAN. You would make this Commission, then, something like a master in chancery, who takes the testimony, and reports the testimony to the court, and sometimes his conclusions.

The CHAIRMAN. The hearing before the Commission in such a case implies the idea of notice to everybody, and a fair chance to everybody to be heard.

Mr. MANN. The kind of a commission that has been referred to, appointed by a State court, such as a master in chancery, or anything of that sort, is appointed by the court, and such a commissioner is an officer of the court who proceeds by direction of the court. It is an elementary proposition that every court must have jurisdiction of the parties first, and to confer upon this interstate commerce nisi prius the power of a court is beyond the power of Congress.

Mr. KERNAN. Yes; the suggestion is to treat it somewhat in the nature of the report of a master in chancery.

Mr. ADAMSON. You think Congress can not provide to give jurisdiction to a Federal court?

Mr. KERNAN. That is a question I want to look at. I know so little about questions involving as much change as that that I would not want to say whether it would be constitutional to permit a court of the United States to render a judgment of that character upon the findings of a body—the taking of testimony and reporting conclusions—that

was not part of the court itself or not appointed under the order of the court itself. I should doubt whether you could do that.

Mr. SHACKLEFORD. Unless it was made an annex of the court by enactment here?

Mr. KERNAN. That ought not to be done. I do not think we ought to contemplate anything that involves changing the jurisdiction, the procedure, the methods of the United States courts. It seems to me you might find considerable difficulty in enacting the provisions such as you suggest, although it might be an improvement over the present situation in effect.

Mr. ADAMSON. May I ask you a question concerning the language on page 5? It provides there twenty days. Is not that a very short time?

Mr. MANN. He suggested sixty days.

Mr. ADAMSON. No; it was in another place he suggested sixty days.

Mr. KERNAN. I think that should be in accordance with that other section. I have suggested that that section, page 6, should be changed so that it would read sixty days instead of thirty days. I think the filing of a decision ought to have the effect of a stay for sixty days.

Now, in reference to this other, all through the bill the provision as to the number of days in which they may file a petition for review and other things should be made liberal in the matter of time.

Mr. MANN. That is, twenty days; and then the requirements that the Commission shall file a certified copy of the record within fifteen days—

Mr. KERNAN. Pretty short—

Mr. MANN. Which, if the record was long, if it was like one of these cases like the Social Circle case, it would be impossible.

Mr. KERNAN. Yes, sir. I think all through the bill in those matters of the time in which things are to be done that the bill should be scrutinized, and such experience as you have about that would tell you that twenty days is too short.

Mr. RICHARDSON. Would that operate as superseding the judgment of that Commission when that is filed within the fifteen days, or the thirty days, or whatever it is?

Mr. KERNAN. Does it?

Mr. RICHARDSON. Yes.

Mr. KERNAN. I do not understand it does.

Mr. RICHARDSON. And you do not think it ought to operate?

Mr. KERNAN. I do not think so. The railroad, upon having filed in the court the record of the testimony taken below by the Commission upon which an order has been made against the railroad, can always say to the court there is a question of law here, it is doubtful whether this order is fair and just, and the jurisdiction of the court is ample then to say. Now, for instance, a court might do this—

Mr. RICHARDSON. Now, that is going upon the presumption that the decree of the Commission is absolutely correct. Now, is not that, from the standpoint of a lawyer, a very dangerous power to put in the hands of three men?

Mr. KERNAN. You see, you favor a practical remedy. We are after a practical remedy because we have found under the act now that there is such delay that it does not accomplish anything. We have to get a line somewhere which is fair between the delay that now exists and an arbitrary exercise of power by the Commission against railroads.

It seems to me we reached that mean line of safety by providing that the United States courts shall have the absolute power to suspend the operation of that order upon the application of the railroad. I think all the experience of those who have had practice in the United States court is that the court is most liberal in the matter of staying proceedings where a question of doubt exists as to the validity of the order that is to be questioned before it.

Mr. RICHARDSON. Yet, if the Federal and circuit court refuse to do that and the railroad would still carry on their case to the last court, the Supreme Court of the United States, and that court would hold that the original order was absolutely wrong, then what remedy has the railroad company?

Mr. KERNAN. That is one of the incidents of the administration of justice.

Mr. RICHARDSON. What instance can you give in life that is equally as bad as that?

Mr. KERNAN. I do not know—

Mr. RICHARDSON. Equally as dangerous and obstructive?

Mr. KERNAN. I had an order made the other day in a divorce case to pay \$500 counsel fee, \$50 a week alimony. I am entirely satisfied that we will reverse that on appeal, but I have to pay that \$500 in five days and that \$50 a week right straight along, and I can never get that back when I reverse that. But that is one of the instances of the administration of justice.

Mr. MANN. That is one of the instances that comes from getting married.

Mr. KERNAN. Too much; yes.

Mr. SHACKLEFORD. Would not this be a fair illustration of the difficulty Mr. Richardson suggests? Suppose a lot of shippers in this country were oppressed by unfair rates, and that went on for two years without their waiting for the action of the court, and they had to pay unjust and illegal rates to get their commerce to market; would not that be equally as bad?

Mr. KERNAN. Of course; everybody recognizes that, of course.

Mr. MANN. I would like to direct your attention to an idea there—

Mr. KERNAN. I think very likely that the result of this would be that the court would secure justice in this way; here comes, for instance, the decision of the Commission which requires the railroad to do something or other. For instance, it refuses, if you please, to sustain a decision of the Commission lowering a rate. Why can not the court, upon appeal in a question of the amount involved, order a railroad company to keep an account of transactions and of the amounts received, so that in the end reparation may be done? It has occurred to me that probably something of that kind would be worked out in the practical results when the act was applied to any cases of this kind.

The CHAIRMAN. Let me suggest a point I would like to have you elucidate. Suppose a railroad company strikes an adverse circuit judge somewhere—and there have been such in the United States.

Mr. KERNAN. Rare instances; yes, sir.

The CHAIRMAN. And the judge refuses to stay the order of the Commission, which has fixed, for instances, a rate of \$1 where the rate properly should be \$2. That order of \$1 goes into effect. They appeal to the circuit court, which refuses to stay the order. They appeal to the Supreme Court of the United States, which finally passes upon the

question and decides that order is illegal. It goes back through the circuit court. In the meanwhile the \$1 rate is being collected. It goes back to the Commission, which thereupon fixes the rate of \$1 and 1 cent, and that goes into effect, and the court refuses to stay the order and they go to the Supreme Court again. They do not have to have a hearing the second time to fix the second order. Why could not the Commission maintain a low rate, an absurdly low rate, if you choose, for all time in that way? How under this bill is there any power to correct an evil of this sort, if one should arise?

Mr. KERNAN. I do not know that there is any. That assumes, of course, that a commission really acts in violation of all principles of justice and right about it.

The CHAIRMAN. It assumes that there is a difference of opinion between the Commissioner and the railroad, as there invariably will be, and as there is between the shippers and the railroads, as to what is a reasonable rate.

Mr. KERNAN. I think it is impossible to frame a bill so that it may not be assumed that there may be difficulties arising under it on both sides.

The CHAIRMAN. This is not a difficulty. The question is whether there is any way of correcting a possible injustice, and you must presume that such a case may arise, because that is exactly the case you claim as arising on the other side.

When the court of last resort has settled it, whatever may be its decision, it is settled for all time. That is the only basis upon which we proceed. But here you can assume a case where the court of last resort decides in favor of the railroad company and still is without power to enforce its decision.

Mr. KERNAN. In view of the injustice that may be done on the other side to shippers it has got to be a question of where one side or the other is going to suffer, and should we not adopt the best method we can of simply having it determined what the right rate is, and then in case it is reversed, so that the rate is found to be unjust to the railroad, then that is one of the dangers and one of the incidental things that a railroad has got to expect to suffer from the administration of the law, because I think on the other hand in most cases it is true that the maintenance of the rate in the end is found to be an injustice to the shipper.

Mr. MANN. The objection made to the present interstate-commerce law, as I understand it, is that while the Commission has the authority to decide that a rate is unreasonable, and that can be carried into effect, it has not the authority at the same time to decide what is a reasonable rate.

Mr. KERNAN. For the future?

Mr. MANN. For the future. Now, in this bill, as far as I gather, it gives the courts power to say whether the rate fixed by the Commission is reasonable or not.

Mr. KERNAN. Yes, sir; that must be open to reform.

Mr. MANN. But it has not given the courts authority to decide what is a reasonable rate, and under this bill as I understand it—that is the reason I am asking you, I may be mistaken—if the courts decide that the rate fixed by the Commission is not reasonable the courts can not decide what is a reasonable rate. They refer it back to the Commission, which may incidentally say, without a hearing, that a rate of a quarter of a

cent or any fraction of the above rate that they previously decided upon shall be a reasonable rate.

Mr. KERNAN. Are you sure about that?

Mr. MANN. I am not sure about anything.

Mr. KERNAN. Are you sure that the court has not jurisdiction in all cases of review to reverse, or to affirm, or modify?

Mr. MANN. I don't know.

Mr. KERNAN. I think that jurisdiction exists. I know in all of our State courts where a judgment comes up that is wrong it can reduce it.

Mr. MANN. The courts hold now that they do not have the power to decide what is a reasonable rate under the interstate-commerce law. All they have the power to do is to decide whether it is unreasonable.

Mr. KERNAN. The courts hold that the power of the Commission is to say. That question has not been raised. I understand that the courts have power in every case of appeal on a question of rates to say what a reasonable rate is.

Mr. COOMBS. Not to fix it, though.

Mr. KERNAN. Not to fix it except in a way that it would be substantially binding on the Commission thereafter. It can say, for instance, this rate fixed by the Commission was unreasonable, being fixed at a dollar, upon the evidence that it ought not to fix it for more than 50 cents.

Mr. MANN. That is the very complaint by the shippers, that that is not binding on the railroad company, and the complaint is that if a reasonable rate is 50 cents and the railroad has fixed it at \$1 and the Commission finds it unreasonable and the courts say 50 cents is a reasonable rate the railroad comes again the next day and makes a rate of 99 cents or 99.9 cents.

Mr. KERNAN. Now, this is designed to enable the Commission to fix the reasonable rate for the future. I think in reviewing that the court has a right to affirm it or reverse it in whole, or to say that the Commission instead of fixing that at 50 cents ought to fix it at 25 cents.

Mr. SHACKLEFORD. Would there be any objection to putting that in the law?

Mr. KERNAN. I think that would be binding thereafter upon the Commission under the same set of circumstances.

Mr. MANN. Let me read you what the bill says:

If upon hearing, the court shall be of the opinion that the order of the Commission is not a lawful, just, and reasonable one, it shall vacate the order.

Mr. KERNAN. What page is that?

Mr. MANN. Page 5 [reading]:

Otherwise it shall dismiss the proceedings in review.

Mr. ADAMSON. You do not think the lawyers and litigants in the country would consent, do you, Mr. Kernan, to have the entire time of Federal courts devoted to fixing rates.

Mr. KERNAN. That is one of the difficulties we were trying to get away from.

Mr. ADAMSON. Under the idea you enunciate it looks to me like—

Mr. KERNAN. I said it was only a question of power. I have not said whether I thought it was practicable to do it.

I think courts have power to modify it or affirm it or reverse it; but

I have not said I thought it was good policy to put them in the position of doing it.

Mr. ADAMSON. And just make the order final in the other case; say what it ought to be—

Mr. MANN. But it seems to me that the evil which the shippers now complain of would then fall upon the railroad companies absolutely.

Mr. KERNAN. It might be true in some cases.

Mr. MANN. Because this bill does not purport to give the courts power certainly to say what a reasonable rate is, but only to pass upon the question as to whether the rate fixed is reasonable, and that power they now have.

Mr. KERNAN. It might be true that in some cases that would result; but it is impossible to frame a law, I think, where there is no possibility that there may not be injustice done for a time. There is no method of procedure where something of that kind may not happen.

Mr. SHACKLEFORD. Why might not that power conferred by that section be conferred upon the court upon review of any court, if the rate is found unreasonably high or unreasonably low it shall be within the power of the court to establish such a rate as will be reasonable?

Mr. KERNAN. Why not adopt the methods of our appellate courts in New York? The appellate courts there are authorized to affirm or reverse or modify. The difficulty here seems to be that there is no authority in the United States court under this section to modify.

Mr. SHACKLEFORD. Why not confer it by this section?

Mr. KERNAN. I see no objection to it. I think it would be a good thing to do.

Mr. COOMBS. Would not that interfere with the legislative function?

Mr. KERNAN. This whole business—

Mr. COOMBS. You have the power to establish a rate—

Mr. KERNAN. This whole thing is an interference with the legislative function. In passing the interstate-commerce law whatever power you conferred upon the Commission the Supreme Court has said was legislative; and this is simply conferring more legislative power.

Mr. MANN. As I understand it, the court always has provided, as a matter of judicial determination, what is an unreasonable railroad rate. The only question is in determining it in such a way that it can be enforced through the Commission.

Mr. KERNAN. I think this would be very well amended as suggested, so that the court would have a right to modify; so instead of compelling the railroad to reduce their rate 10 or 50 cents a hundred that the law should provide that it might be only one-half of that reduction, and as so modified the order of the Commission is affirmed.

Mr. COOMBS. Do you think that would be constitutional?

Mr. KERNAN. Now, when you ask a question like that I do not answer it without looking at it. I do not see now any constitutional difficulty in permitting courts of the United States to affirm or reverse or modify, and I think they do exercise that power. I know all appellate courts in our State exercise the power of modifying. They say this judgment for \$10,000 is reversed unless the respondent consents to reduce it to \$5,000.

Mr. COOMBS. But that is a body to which has been delegated legislative authority.

Mr. KERNAN. If the court has the power of modifying as I suggest,

then when an appeal is made on review for the stay and they having that power of modifying, the railroad says the order is that we shall make a reduction of 10 cents, whereas they ought not to have ordered us to reduce more than 5 cents, and because of that apparent order, or because we can satisfy your honor upon the papers here presented which come from the Commission that the Commission probably, or perhaps reasonably, made a mistake; we therefore stay the proceedings.

That covers the ground. You extend the jurisdiction of the court, then, to grant a stay where it seems that there is probable reason that, in the final judgment of the court, they may to some extent modify the decision of the Commission. I think it could be modified in that way.

Mr. MANN. Now, one other question in reference to sending back to the Commission to take testimony.

Mr. KERNAN. I have said something about that, and I would repeat that that is a very material feature, as any lawyer appreciates. For instance, I have gone before that Commission with a window-shade case. We took an immense amount of testimony. The Commission rendered a decision in my favor as to the classification. Then I went before Judge Wallace to compel them to obey that order.

Before I come to that—this is a curious instance to show you how these things operate. After I got that decision against the New York Central, and the Delaware, Lackawanna and Western, to place window shades in a new classification, a week or two after the decision I wrote the New York Central and asked them what they were going to do about complying with that decision. The traffic manager wrote back to me that they had concluded that the decision was just, and that they would accept it and put that classification in force. I have that letter. Mr. Haggeman of the Delaware, Lackawanna and Western did the same thing. They said they agreed to accept the decision of that Commission, and the classification went into effect, and we shipped under it for four or five weeks. The first thing we knew it was changed back to the old classification. I wrote again to the traffic managers and asked them what they meant. They said that while they themselves were quite willing to conform to the decision, that their associates in the traffic association objected, and therefore they would be obliged not to comply.

You see the position we are in. When great systems like the Vanderbilt system do not dare to stand up and accept an order which they themselves concede to be just, because of the pressure brought to bear upon them by their associates in an association of that kind, you see what a question this is. It is not a question of whether half a dozen—or 50 roads sometimes—want to do a thing. The weakest line in the combination can force the strongest line to rebel even against a decision which the strongest lines admit to be just. That is one of the difficulties of the situation.

In the case I have referred to, I went before Judge Wallace when they refused to obey the order and asked that they be compelled to obey that order. They treated that whole proceeding before the Commission as though there had not been any testimony for findings at all.

They came in with stacks of affidavits, all complicated and twisted up, and I had to reply by affidavit, and the result was that we had before the court the testimony taken before the Commission and the testimony taken before the court and stacks of affidavits. Every law-

yer knows what it is to try a case of that kind on affidavits. There is no opportunity of cross-examination, no opportunity for either side to cross-examine the affiants. And so, no matter about the history of that case further, but that is the way we had to try that case finally. Although we had the findings and the decision of the Commission, they were treated by the railroads as absolutely useless. That has been the practice of the railroads. They do not present their case before the Commission, because they hope by not presenting it the Commission will make some mistake, will leave some loophole for them, and that they, if they try the case at all, can try it *de novo*.

The Supreme Court of the United States has commented on that and said that is a practice of the railroads which is a very wrong one and which ought to be corrected. It has said that they ought not to be allowed to present their cases piecemeal before a commission and then come into court and treat the case *de novo*.

Mr. MANN. Who takes the evidence before the Commission?

Mr. KERNAN. The Commissioners.

Mr. MANN. They sit as a commission?

Mr. KERNAN. They have in every case I have known of. A majority of the Commission sit.

Mr. MANN. Do you think they could take evidence enough to expedite the trial of all these cases, if this act goes into effect?

Mr. KERNAN. Within the limits of human endurance. If you take a body of five men who are trained on this question and have nothing else to do they can accomplish a great deal. They do not have to try trespass cases and negligence cases and damage cases; but simply devote themselves to one thing.

Mr. MANN. They have to decide cases. That is a good deal besides trying cases. There are only three hundred and sixty-five days in the year and practically only one court sitting taking testimony.

Mr. KERNAN. There are limitations on it, of course.

Mr. MANN. How will it be possible for one commission to take all of the testimony in all of the cases which would be brought under this act, involving railroad rates all over the country, in addition to trying cases?

Mr. KERNAN. You must remember one thing, and it has been true in the cases we have tried there. The Commission keeps accumulating facts, testimony, and so when you come to a hearing upon almost any question you find a vast number of your facts already covered, covered by previous decisions, covered by the filed tariffs, covered by previous findings, and that the additional testimony is not as extensive as it is where you have to go before a court in each case, or a different court in each case, and go over the whole thing. The Commission accepts accumulated facts.

Mr. MANN. Would they not have to go over the whole thing in each case?

Mr. KERNAN. They might, but practically it results in this: You are one side for a railroad, and I am on the other side, and we go before the Commission, and as to the tariffs and the vast number of facts, the Commission having already possession of them, we consent that that become part of the record in our case. That is always done.

Mr. MANN. That is done to a certain extent in courts just the same; but here is a railroad case that will arise in New England, and another one in California, and another one in New Orleans, and forty in Chi-

cago, not to mention those in other parts of the country. Now, how is the Commission going to be able after hearing the case, the court requires new evidence, to trot around and take that new evidence and ever get the matter disposed of?

Mr. KERNAN. I think as the Commission proceeds it keeps, as I say, eliminating the necessity of doing that work all over again in each case, and it keeps accumulating tariffs, and regulations, and facts, and agreements between railroads, so that it has almost always in every case presented all the fundamental foundation facts or many of them. It has the experience acquired in other investigations, which perhaps require in the present investigation only that it be supplemented by some new facts covering the situation. Take, for instance, a hearing on the question of an Atlanta rate.

Very likely the Commission has been through the question of the competition that applies to rates generally, from Atlanta to New York City, and therefore it does not have to spend time in going through again and acquiring information as to the situation that Atlanta occupies as to similar competition points.

Mr. MANN. It would serve that evidence up to the court?

Mr. KERNAN. Yes.

Mr. MANN. It would have to take this evidence over again, would it not, if it was going to certify to a circuit court?

Mr. KERNAN. It would if a railroad insisted—

Mr. MANN. If the railroad's policy was to delay it would insist, would it not?

Mr. KERNAN. Oh, no; I have never had any practical difficulty with the railroads in that regard.

Mr. MANN. But you have never had this act in effect.

Mr. KERNAN. Under the old act the parties always agreed upon such fact without difficulty; they agreed as to a vast number of things.

Mr. MANN. But the difficulty is under the present law—

Mr. KERNAN. Now, I will admit, Mr. Mann, if every railroad every time a complaint is made wants to come before the Commission and put it through the proof from A to Z, and delay it and bother it, it can do it; but that is not the practical way that they treat the question or that anybody does.

Mr. MANN. It has never been treated that way before because the Commission has never had the power to settle the rates.

Mr. KERNAN. For ten years the railroads thought the Commission had all the power.

Mr. MANN. That is your claim, but the railroads do not say so.

Mr. KERNAN. There are no decisions to show to the contrary that I know of. Perhaps I make a somewhat extravagant statement; perhaps there were some, but, as I say, the vast majority of them—take my export and import rate case. I will tell you that eighteen out of twenty-eight accepted the decision, and sent word to the Commission that they would obey it and change their rates accordingly. The question of power in the Commission has been one that is a difficult question, and it is a question whether they have not that power already.

Mr. MANN. Has not the Commission the power to delegate anybody else to take testimony?

Mr. KERNAN. I have never known them to do anything like that; I have never known testimony to be taken except by the Commission.

Mr. MANN. There are five members of the Commission. Can each one of them hold court and take testimony at the same time?

Mr. KERNAN. In all of the cases I have been in there have always been a majority, at least three members, when testimony is taken.

Mr. MANN. The bill says, "The Commission."

Mr. KERNAN. I have taken testimony before three of them, but I have never known the taking of testimony except before a majority of the board.

Now, I want to say another word about this pooling question in the other bill, and about something we have to suggest in reference to that which we think goes as far as the legislature should go, as far as Congress ought to go.

I always thought it was a mistake to prohibit pooling in the interstate-commerce bill originally. I think they ought to leave it under the common law of limitations, which prevented the parties to pool from recovering against each other any agreed penalties or any damages. They go into court and the court says, Your pool is a violation of the common law, and we will not help either party, and we will not render any judgment in favor of either party. I thought it was very desirable that through something like pooling destructive disastrous competition should be regulated and restrained.

The difficulty about authorizing pooling is this: Pooling practically involves a destruction of the right of the shipper to route his traffic, and that is the fundamental difficulty that they have never been able to get over. I examined Mr. Albert Fink on the pooling question, and his examination lasted a number of days. Mr. Albert Fink is the ablest railroad man on the subject of transportation questions that I have ever met.

He was brought up as the traffic agent and manager of great systems like the Louisville and Nashville and others, and finally, because of the fact that he knew the business from A to Z, and because he was one of those great, big, broad-minded Germans that could take in all sides of all questions, he was chosen by the railroad as the joint traffic manager of the Trunk Line Association, and held that position until he resigned it and would not work any longer; because he was a man who could take all the claims of conflicting railroads in that association and pass upon them with a just conception of what was due to each, and how to get at what was right about it. I never knew a man who could get up a statement on the popular side of the transportation question as well as he could. He covered the whole ground. He saw it all. He was in favor of the interstate-commerce law; he always favored regulations of railroads by law. He stated that it must come—that the only way to ultimately reach the control of rate-cutting lines that were cutting into and destroying the revenues of the strong lines—that the only way was ultimately through regulation by law, which they would have to comply with.

Now, upon pooling; I asked him about pooling. He said pooling was of two kinds; either a money pool or a traffic pool. He said the Trunk Line Association had practiced to a more or less extent the money pool, but said it was utterly impracticable. Here are two lines running from Chicago to New York that are competitive. Now, then, one of them, the Canadian Pacific, is a weak line. It is a line 1,200 miles long. The Pennsylvania Railroad is a strong line. It does business, and has a vast volume of business, at a low rate yet

ton mile, and can afford to do business at that rate and give first-class service. That road is 822 miles, against 1,200 miles for the Canadian Pacific. You get those two railroads into a pool, and what is the result? To preserve business, and carry out the object of the pool, you have to give to the Canadian Pacific 25 per cent. We propose to give it to it in a money pool, and that means that at the end of the year we will see it has carried only 10 per cent of the traffic. Everybody wanting to send traffic wants to send it by the best line, not by the long-around line.

Mr. Fink said there was not a strong line in the combination that would not be willing to pay three times every year in money the entire amount of the value of the percentage of traffic to the weak line to it, because at the end of two, or three, or four, or five years the weak line would have to go out of business entirely because it would not have any traffic. A railroad can not live on a money pool. The weak line can not stand it. Its rails rust, its force is not occupied, and it has nothing to do, and it can not stay still and let its road lie idle. So a money pool, he said, was not practicable. That brings us to the necessity of having a traffic pool. It must have its 25 per cent of the traffic. How is it going to get it? It can only get it by taking it from you and me against our protest. You are in Chicago; I am in Chicago. You are in grain. Modern conditions require that transportation shall allow us to reach our markets quickly.

If you can get your grain to New York in five or six days that becomes an essential element, a part of your business, and you want the Pennsylvania or the New York Central to take your grain because the conditions of business require that you get it there as quickly as possible, and you do not send your grain around 1,200 miles by the Canadian Pacific, delaying it from two to four days. But to maintain the pool some of your grain, 25 per cent of your grain, has to go by the Canadian Pacific. Therefore you have to invest in a pool and try to route traffic, so as to destroy the right of the shipper to route his own traffic, and you can not maintain it in any other way.

And this objection to pooling, which nobody has ever been able to suggest any remedy for—they try to remedy it in this way: They try to remedy it by giving a differential from the interior to Europe; and if they make that differential low enough to overcome the objection of the shipper shipping that way, then it is so low it does not pay and it is a losing rate; and if you make the differential high enough to permit a profit, it is so high the traffic will not go that way. That is the difficulty about pooling.

Therefore I do not think there is any serious question that nobody would for those reasons favor a pooling bill. I thought they would work it out in some way, and they are doing so. A better way—they are working out the elimination of competition by consolidation of competing lines. I think that is a safer and better way. For instance, you have a half dozen roads in a pool and you as a body are sitting here to determine the questions arising in that pool as to division of traffic, and all that kind of thing, and as to rates.

The weak line in the pool constantly forces the situation. You have to finally render a judgment which does injustice to the strong line because you give to the weak line something that is a matter of ordinary competitive condition that it can not get. That is the difficulty with dealing with the situation in a pool either by the legislature

or by any other body. If you permit the pool to regulate its rates, your rates have always got to be based upon the interests of the weak lines in the pool, which involves a concession to them of something which under the laws of supply and demand and transportation they could not get. And, secondly, you are knocking your heads against a principle which is right and which in the end has got to prevail.

Now, then, under this modern concentrated ownership of a half dozen lines you deal with them as one entity. For instance, a complaint comes before you that the rates upon a certain part of one of their lines, upon one system, are wrong. Now, if that is a weak line you have that difficulty in dealing with it by itself—don't you see?—that you can not cut its rates to what they ought to be because you bankrupt it. That is the only reason why you do not do it. But when it becomes a part of a great system then, in considering all questions of rates and their relations upon all of the parts of the system, you only take into consideration the gross earnings for the whole system, the expense of the whole system, and, treating it upon that basis, you can fix your rates—do you not see?—relatively fairly.

It does not become so important then whether you cut the rate or raise rates on a part of the system so long as you do not affect the revenues of the whole system injuriously.

I want to suggest this view; to add to this that associations can be formed among the railroads for the establishment and maintenance of just, reasonable, preferential, uniform, and stable rates, and for the promulgation and enforcement of reasonable and just rules and regulations as to the interchange of interstate traffic and conduct of interstate business among each other. That will lead to the railroads agreeing on uniform classification legally. It will lead to the maintenance of rates. They can provide their penalties among themselves for breaking their agreement. Those penalties will be just, because they will be agreed upon by the railroads themselves, not imposed by Congress. They will agree that if they break the agreement they will pay to each other such and such penalties, and this will authorize what does not exist owing to the common-law prohibition—the right among those railroads to recover those penalties from each other.

Mr. RICHARDSON. Would that suppress rebates?

Mr. KERNAN. Yes; it would tend to, because they can put penalties on each other.

Mr. RICHARDSON. A rebate is a secret matter.

Mr. KERNAN. But railroads know what they are doing; they can tell by the way traffic starts and runs in increased quantities whether it is because of some rebate given. They can readily find out each other's wrongdoings and a good deal quicker than outsiders can. If they, among themselves, agree upon rates and classifications and on penalties for violations of the agreement, and if by act of Congress that is made a legal agreement, so it can be enforced by the railroads, I think it is a great step, and a concession that railroads ought to have.

That agreement is to be filed with the Interstate Commerce Commission. If they disapprove it it does not go into effect. If they find it is against public interest they can disapprove it, stating their reasons, and then that leaves the railroad in a position to renew the agreement, eliminating from it these things which have been found by the Commission to be unjust.

I think with that addition, Mr. Chairman, this bill will go very far

toward perfecting and carrying out the system, the method that Congress had in its mind. I do not think we ought to abandon the interstate-commerce law now. Having started upon that as a direction in which we might ultimately hope, through its operation, through the ascertainment of its defects, through their corrections and amendment and changes, in time reach a satisfactory regulation of these questions between the public and the railroads.

I do not think we ought to stop now. I think the effort of every legislature and every man that talks to them ought to be to try to perfect that law, so we may at least in the end have the law as it ought to be, as perfect as it can be; and then, having given it a trial, we will know whether regulation by law and by statute of these great questions between the carriers and the people is a practical solution of the difficulty. But until we have an amendment of the law, reasonable and just to the end of correcting its defects, we never can know really whether the interstate-commerce law is or is not going to be a solution of these transportation difficulties.

(Adjourned.)

MONDAY, *April 21, 1902.*

The Committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Judge Knapp, will you give your views to the committee this morning? I will say that for two weeks this committee has been considering and taking statements upon the general subject of interstate transportation. We have heard from a good many gentlemen, and the committee determined finally that they would be glad to give the views of the Interstate Commerce Commissioners, commencing to-day and taking such time as you and the other gentlemen of the Commission desire, and I would say that while we have a number of bills before us we have not been especially considering any one of them, but the entire subject, although House bill 8337 has been to a considerable extent discussed by gentlemen appearing before us; and if you have a copy of it, or we will furnish you a copy if you desire to discuss that, we will be very glad if you will pursue that course, or otherwise any course that is agreeable to yourself.

**STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN OF THE
UNITED STATES INTERSTATE COMMERCE COMMISSION.**

Mr. KNAPP. Mr. Chairman and gentlemen of the committee, I am very much obliged to you, as are my associates, for giving us this opportunity to express our views respecting the various legislative proposals which are before you.

So much may be said on this subject that I hardly know where to begin or what comments of my own will likely be of most service to the committee.

One thing, however, I am disposed to say at the outset. Those who do not want the Government regulation of railways to succeed, those who do not want and do not intend that railways shall be subjected to any actual and effective control, are just now very bold and eager in

declaring that this law needs no amendment, that the law is all right as it is, and all that is necessary is for the Commission to go on and enforce it just as it stands.

Now, of course talk of that sort deceives no one who is familiar with the facts or has any knowledge of the actual situation. This law is defective. In some important respects it is practically unworkable. The great principles which are embodied in it are sound. Its purposes are wholesome and beneficent, but the machinery provided for enforcing those principles and realizing these purposes was never sufficient; some of it has broken down, and it is sadly in need of renewal and repairs.

Now, to present my personal views in the briefest way I ask your attention to some observations of this sort.

I suppose that any scheme of public regulation will provide, as the present law provides, that all carriers subject to its provisions shall publish the rates which they expect to charge the public. In other words, that there shall be an announcement, through duly published tariffs, of the rates which the public will be required to pay.

✓ Under the present law the carriers exercise without restraint the initiative in rate making. They are free to put in just such tariffs as they see fit. They are under no legal restraint whatever in that regard, and there is no proposition to change the law in that respect. I do not advocate, and so far as I am aware no member of the Commission has ever advocated, that the initiative in rate making should be taken away from the carriers and given to the Commission or any other tribunal. So we assume that whatever is done in the way of amending the present law will not in any respect change this provision in that regard, and that carriers will continue to be free to exercise entirely the initiative in rate making. They will be free to put in just such tariffs as accord with their judgment or their interests. ✓

✓ That being so, two difficulties at once arise, and those difficulties I beg to submit to you are of very different character and require very different treatment. The first difficulty is, how are you going to compel the observance of these tariffs when they are once published; that is, how are you going to stop rebating and rate cutting and all those different devices by which one shipper in a given locality gets better rates than his business rivals? The way the present law undertakes to prevent that kind of evil is to say that rebates and rate cutting and all secret arrangements which are preferential in their character are misdemeanors and are to be punished as such, and I do not know any other way to treat that class of difficulties. Of course, I think there is, perhaps, something to be said in favor of supplementing that treatment with one which should subject the carriers engaging in such practices to a forfeiture to be recovered in a civil action; but aside from those two remedies I know of no other which can be applied to this class of misdemeanors or offenses.

✓ Now, there are two respects in which the present law, in its attempt to reach and prevent and punish those who permit these practices, has proven to be entirely inadequate. The first of these is that the corporation carrier is not liable, but only the officer, the agent or representative. That is to say, the real offender, the corporation, which is the beneficiary of the illegal arrangement, is not under any liability. Now, that has two very unfortunate results. One is that you can not obtain voluntary testimony under such circumstances. ~~Offenses of~~

this kind are not like those against rights of property, which are sought to be prevented by general laws, because in those cases there is always somebody who is injured, there is somebody who is in the attitude of prosecutor, there is somebody who is not only willing, but desires to bring the offending party to justice. But when a railroad officer makes a secret compact with a shipper which gives him a lower rate than the public are required to pay, both parties are presumably benefited by the transaction; neither wants to expose it and ordinarily neither of them will disclose it; certainly not by any voluntary action. Railroad officials of that grade which participates actually in transactions of this kind are a sort of fraternity; they are like lawyers and are personally intimate with each other, and over and over again they tell us that they will not under any circumstances give evidence or be in any way connected with the effort to disclose the truth of those transactions when the result of that disclosure might be to inflict punishment and suffering upon some friend or send some associate to jail.

Now, directly connected with that is the further fact that the shipper is not directly benefited by this rate at all, unless the secret rate gives him an actual discrimination against some other shipper, but that is something that very rarely happens, because these rebates and secret arrangements are not ordinarily made with the isolated individual shipper, but they are made with great combinations of shippers, they are made ordinarily under circumstances such that the transaction covers practically all the traffic that moves from a given point. Consequently there is no actual discrimination between the shippers.

Take the well-known and notorious case of the recent investigations of the Commission respecting rates on dressed beef and packing-house products. Here railroad officials for the first time admitted that for years they had constantly and habitually disregarded their published tariffs and had carried at rates below the published tariff an amount of traffic so great that the difference between the published rate and the actual rate amounts to billions of dollars a year, and yet it was the unanimous testimony that all the shippers who were interested in those rates got practically the same rate. There was no discrimination between Armour and Swift and between Hammond and Sulzburger.

They all got the same rate, and I undertake to say—and I do not think it can be successfully controverted—that upon the facts in that case, showing a most extensive and, as it seems to me, alarming disregard of legal duty, not one of the shippers is amenable under any process, either civil or criminal. No indictment will lie against those shippers, and no prosecution can be carried out and no punishment can be inflicted upon any of them, because you can not prove that there is any actual discrimination between them; they all got the same rate. And that is only typical of what will be ordinarily the case, and that is particularly true under our modern methods of competition, and due to the fact that great business enterprises are centering in a few hands. It is not any longer the case of some individual getting a preference or a discrimination through the secret practice, but it is the case of great aggregations of shippers controlling enormous amounts of traffic which succeed in getting it carried entirely at rates below those which the general public have to pay, and in such cases they can not be reached at all.

So I say there are two respects in which this law is in urgent need of amendment.

Mr. CORLISS. I would like to ask you, if I will not interrupt you, right there if in that case it was developed that there were small shippers who at the same time and over the same lines shipped beef at a higher rate than the larger shippers paid?

Mr. KNAPP. It was not developed, but that I do not think was the fact.

Mr. RICHARDSON. Where, then, was the injury which was done to the general public?

Mr. KNAPP. That I am not arguing.

Mr. RICHARDSON. Who was complaining, if there was no discrimination?

Mr. KNAPP. If no injury results from the fact that the men who produce in such enormous quantities dressed meats and packing-house products get these preferences, then there is no occasion for requiring the performance of the published tariffs, and not much to be accomplished—

Mr. COOMBS. If other shippers are supposed to rely upon the published tariffs they may be greatly injured by the secret cuts upon their product and not others.

Mr. KNAPP. That is true. There might be some small shippers in certain localities; and one reason, and I think it comes pretty near explaining the situation, why this business is all in the hands of four or five great concerns, is because their preferential rates, although uniform between themselves, have driven all the small concerns out of the field.

Mr. RICHARDSON. The actual complaint, then, is that the railroads publish one rate and take another.

Mr. KNAPP. That is it.

Mr. RICHARDSON. When there is nobody injured by it?

Mr. KNAPP. I do not say that. I say there is great injury in it. If all the packers in Kansas City get the same rates—that is, all these large packers, and there are not any small ones left in Kansas City—if all the large ones get the same rate, they are not indictable, no proceeding can be taken against them; and the smaller concerns in the other places, and nearer to markets, are put at a disadvantage which drives them out of the business.

Mr. STEWART. Would you not suggest right there that it should be made a penal offense to make any departure from the published rates, whether there be a discrimination or not?

Mr. KNAPP. That is exactly what I am here to favor, and what the pending bill favors.

I want two things; I want the corporation carrier made liable, and I want the shipper made liable when he accepts a preference or secret rate, whether there is discrimination or not.

Mr. STEWART. Would it not be a good idea, when they publish their rates, to have them make an affidavit that no discrimination is intended or will be made in variance with the published rates?

Mr. KNAPP. I do not think that is necessary.

Mr. ADAMSON. Would you not better go further and punish the shipper for attempting to secure a lower rate, whether he did or not?

Mr. KNAPP. Yes, sir; and I think one of the pending bills here does make the shipper liable who solicits a preferential rate.

Mr. MANN. You think that the shipper ought not to have an oppor-

tunity to try to get lower rates except through the Interstate Commerce Commission?

Mr. KNAPP. Or through such influence as would tend to bring about a lower rate of freight to everybody.

Mr. MANN. He can not go to the railroad company if it is a penal offense to solicit a lower rate—

Mr. KNAPP. He has no right to solicit a lower rate for himself alone. He may solicit and urge the carrier to reduce his published tariff to everybody, which will be open; but he has not any right to go to them and ask for it for himself alone.

Mr. MANN. Is it not a fact that where railroad rates have been reduced it has only been, and invariably, by the competition, and shippers in one case obtaining lower rates than the published rates, and then the company being obliged to come down to that special rate, which then becomes the published rate?

Mr. KNAPP. There are some instances of that kind.

Mr. MANN. Do you know of any other instance, where it has not been done in that way, where it has been accomplished?

Mr. KNAPP. I think there are many instances.

Mr. MANN. Where, without the competition, the rates have been reduced?

Mr. KNAPP. Put it in this way. I think you will be surprised—and I speak from my own personal point of view and not for my associates in any way—I think you will be surprised to see how slight and inconsequential have been the reductions in the published tariff rates which are due to railroad competition. That competition has brought down rates is beyond question, but it has brought them down under secret agreements by which a few have profited.

Mr. MANN. Take the case you cited a while ago.

Mr. KNAPP. A few have not profited there.

Mr. MANN. Everybody in the business has profited?

Mr. KNAPP. Everybody in the business at that place.

Mr. MANN. Yes.

Mr. KNAPP (continuing). But if dressed meats and packing-house products are carried out of Kansas City for 5 or 10 cents cheaper than from Indianapolis and other places, how is the man in Indianapolis going to stay in the business against such competition as that? He can not do it.

Mr. MANN. Probably not, but the consumer will eat dressed beef just the same—

Mr. KNAPP. But if it is for the interest of the consuming public that there shall be secret rates and bargains between the shipper and carrier, what is the use of having any public regulation?

Mr. MANN. These rates were not secret; they were known.

Mr. KNAPP. Certainly they were secret.

Mr. MANN. Were they not known?

Mr. KNAPP. It was known in a general way. It was a moral certainty that the tariff rate was not applied, but the extent of the reduction, and the way in which the reduction was effected, the amount of the reduction, was not known until we got at it in this case.

Mr. MANN. There was no discrimination at Kansas City?

Mr. TOMPKINS. He said not at that point.

Mr. MANN. Not at that point, between individuals?

Mr. KNAPP. Apparently not.

Mr. MANN. There was nothing to prevent the railroad company from making an open rate from that point as low as they made the secret rate?

Mr. KNAPP. Apparently not.

The CHAIRMAN. Except the long and short haul clause.

Mr. KNAPP. As my brother Prouty observed, we began this investigation a year ago, and we had a session in Kansas City, and we examined before the Commission every local traffic manager of the lines leading out of that city, and not one of them admitted that there was any reduction. They all testified that there was not, and that the published rates were observed.

Mr. MANN. Why were they not punished for perjury? I should think the Interstate Commerce Commission would find a useful field for its activities in that direction, if they all lied before you.

Mr. KNAPP. I do not think they did know, in many cases. The vice-president of one of the leading lines, who testified before us in Chicago and who admitted what had been done, said that none of his subordinates knew anything about it. He said that that matter was arranged solely by himself and was entirely in his own hands.

Mr. PROUTY. And that all papers were destroyed.

Mr. CORLISS. I would like to ask you, in this investigation, which I have not read, was it developed over what period of time these rebates had been permitted, had existed—how many years?

Mr. KNAPP. The order under which the investigation was made limited in terms the inquiry to the calendar year 1901, but it cropped out in the course of the examination of witnesses that what occurred in this year had occurred during previous years, and that practically for many years, one might almost say from the origin of the industry in large volume at Kansas City, it had been the practice.

Mr. CORLISS. I wanted to know whether it was prior to 1880.

Mr. KNAPP. They had had these reduced tariffs.

Mr. CORLISS. Do you not think that, as a matter of fact, that rebate, running back for twenty-five years with the beef industry, has had the effect of driving out of existence all these small competitors?

Mr. KNAPP. I firmly believe that. Not only in this case, but in many other cases.

Mr. MANN. Do you know of any competitors who have been driven out?

Mr. CORLISS. I can tell you of a lot of them.

Mr. MANN. If you have that information, Mr. Corliss, you ought to furnish it to the Commission. I should think it would be in violation of the law.

Mr. KNAPP. Of course, I have no personal knowledge except as statements have been made to me by those who were trying to do business as against this large combine.

Mr. MANN. The law absolutely forbids discriminations, as I understand it.

Mr. KNAPP. Yes, sir—

Mr. MANN. Now, if anybody has been discriminated against, and these men openly admit the discriminations in their favor, I can not understand why they are not punished and why no effort is made to punish them.

Mr. KNAPP. There are two reasons for that. This Commission has repeatedly held investigations of this kind when there was information

or circumstances which warranted the inference that the rates were cut. They have gone to the locality and summoned the railroad managers and subordinates and put them on the stand and examined them under oath, and every one of them have sworn that they knew nothing about rate cutting whatever.

Mr. MANN. But in this case they admitted it.

Mr. KNAPP. Yes. Now, another answer. Of course we can not tell what the Supreme Court will decide upon any question, but my own judgment is that the discrimination which is referred to in the sixth section, and which must be shown in order to convict the shipper, is a discrimination between individuals under the second section of this law, and not the discrimination between localities under the third section of the law.

Mr. MANN. The law has been in force for many years, and I should think it would be about time to get it decided by the Supreme Court; there have been so many discriminations.

Mr. KNAPP. Now, I want to go a step further and say that, notwithstanding the numerous persistent attempts which the Commission has made to get the testimony which shows the existence of these practices, this inquiry in January in Chicago is the first instance in which we ever got any, and we have done everything with that testimony which it is possible to do.

Mr. MANN. Do you think if it has been so hard to get evidence of discrimination when only one of the parties is to be punished that it will be easier when both of them will be punished under the law?

Mr. KNAPP. No, sir; I do not.

Mr. MANN. Then why will such a proposition as you make aid, if you punish both shipper and shippee?

Mr. KNAPP. I am free to confess that as a practical method of enforcing this law there is much to be said in favor of not making the shipper liable at all. That is the way the law was originally. Then it was changed, presumably to take in the shipper, but did not take him in unless you could show the actual discrimination.

I want to answer Mr. Mann a little further. I said what I did about the testimony for the reason that the Supreme Court, in deciding the White case, said that similar circumstances and conditions under the second section was a very different thing from similar circumstances and conditions under the third and fourth sections; and I do not believe you could show that the actual rate which the packers got from Kansas City was a discrimination under the third section as against a packer at Cincinnati, and that the Kansas City packer could be indicted.

If you could show that Armour got a lower rate than Swift, or somebody else at the same time, then you would have a discrimination under the second section and Armour could be indicted; but that is not the fact.

Mr. MANN. I quite agree with that position as far as I am personally concerned. I do not think a discrimination at Kansas City is a discrimination against Cincinnati within the meaning of the law.

Mr. RICHARDSON. Right there you said that you called in certain of these railroad officials and they all denied the fact of any discrimination.

Mr. KNAPP. That has happened more than once.

Mr. RICHARDSON. Did you find out the fact of the discrimination existing from the beneficiaries of these rates?

Mr. KNAPP. No, sir.

Mr. RICHARDSON. How did you get the information?

Mr. KNAPP. Because in this one instance the railroad presidents or their chief executive officers—the men who ought to be held responsible for those things—were examined, and they told the truth.

Mr. ADAMSON. I understand Mr. Mann suggested this trouble, which has been heretofore discussed before the committee, that when you multiply the class of criminals all might claim exemption under the law, and nobody could be forced to testify against anybody else. I wanted to ask you this, if we had not better provide against this offense—as, for instance, it is provided against gambling in the State courts—that no man should be subject to the result of incriminating himself if he testified against the other party.

Mr. KNAPP. That is in the law now, and that I want to call attention to. Now, the difficulty—

The CHAIRMAN. Before you begin on that, will you tell us what differences in conditions existed at this last inquiry, where you were successful in getting this testimony, from the conditions on previous occasions, where you were unsuccessful in eliciting testimony?

Mr. KNAPP. I do not know.

The CHAIRMAN. Were there any differences in conditions?

Mr. KNAPP. I think there was just the difference which I have named, that we went to Kansas City, where the traffic originated, and where presumably these offenses were committed or arranged for, and we called the representatives of the different roads who were located there and in charge of that traffic. They were subordinate officials and they all denied it, and it is not inconceivable that they were truthful in their denials. They might have had the same knowledge that others have, that men in that business had, that there was a discrepancy between the price at which the goods were shipped and the published tariffs, which could not be explained; but that they had any personal knowledge or had any incriminating connection with the illegal transaction was very likely not the case.

Mr. RICHARDSON. They got no benefit from it?

Mr. KNAPP. No, sir; no benefit. That is, when the market price of an article in Chicago is not as great as the market price of the same article in Kansas City, plus the published tariff from Kansas City to Chicago, one is disposed, at least, to suppose that the traffic gets there at a secret rate.

Now, let me speak further of the difficulties—let me go one step further—the difficulties growing out of the fact that the corporation is not itself liable. In the first place, the Commission conceivably can take up an instance and keep calling witnesses and forcing them to testify until they have narrowed the question down to just some few, or perhaps one, of the officials of the company. Then what have you found? Some subordinates, some assistant traffic manager, most likely some clerk, who actually did the thing.

Who wants to indict him, a subordinate, a clerk carrying out the implied if not the expressed orders of his superiors, a man whose position depended on his doing what he did? Nobody wants to send such a man as that to jail or to mulct him with a fine that he could not possibly pay, and it is anomalous, and it does not satisfy one's sense of justice to say that the corporation, the real beneficiary of the transaction, should go scot free, and that the only person who can be

reached is some subordinate agent who is merely in charge of this operation.

Another thing right in that connection. Under the Constitution every man who is examined before the Commission or before any court, and compelled to testify, thereby secures perfect immunity for himself. He can not be prosecuted for that; so that the further the Commission goes in ferreting out the details, the further it goes in letting loose the very men who are guilty. Every man we call is granted absolute immunity.

Now, what happens?

This illustrates another phase of this same question; men high up in railroad circles, men known to you all by name, and many of them personally, came before us in Chicago and admitted exactly what they did, and said that they were personally responsible for it. They were perfectly safe in doing that. Every one of them thereby secured absolute immunity. But when you asked one of those men what particular shipper he paid money to, and on what day, he would refuse to tell. He will say that he does not know, and generally he does not know. What happens, apparently, is this: The president or some executive officer in charge of traffic makes the bargain; he does not attend to the details; he does not know about a particular shipment or a particular payment; and also whatever record there may be made at any time in connection with the transaction, so that the understanding may be known to the parties, is immediately destroyed. In every instance they testified that no records remained, that their books would show nothing, and they themselves, although they admitted the responsibility for what was done, had no knowledge of any particular transaction.

It is idle to suppose that you can apply criminal remedies in the state of the criminal law for the correction of such abuses. It does not happen; it will not happen. But I believe that if the corporation could be indicted, if the officials, the subordinate officials, the competitors, or their representatives, or anybody having knowledge of the transaction could be examined before the Commission and compelled to disclose the facts on which the corporation was liable, then the corporation could be indicted and mulcted with a fine. Until that can be done, and corporation carriers be subjected to large pecuniary losses as a result of these offenses, not much will happen to correct them in the way of criminal remedies.

Mr. STEWART. Do you not think that imprisonment in addition to a fine would have a good effect?

Mr. KNAPP. No, Mr. Stewart, I do not. While I regard these offenses as involving, in many cases, a very high degree of moral turpitude, and I think there are more serious wrongs against order and the inalienable rights of the citizen than burglary or larceny, still we have to take the facts as they are and public sentiment as it exists, and in view of that it is my judgment that punishment by imprisonment instead of being an aid is a hindrance. It is a thing which operates against getting information necessary to convict.

Mr. STEWART. Do you think a fine, however large, would deter these large corporations?

Mr. KNAPP. Yes; and then there is another reason. You can not do anything to a corporation except fine it, and it does not quite satisfy the sense of justice to say that the real offender shall only be fined,

while some paid subordinate in lesser degree may possibly go to jail. Now, I believe that if we could get this law in shape where it would be practically feasible, and in many cases comparatively easy to prove the offense against the corporation, and that corporation could be held to pay a large fine, it would not be simply the pecuniary loss, but the publicity—the fact that the railroad has been indicted and compelled to pay a large fine—would operate as a powerful deterrent, and I do not think we shall get along very far in preventing rate cutting by criminal methods until you gentlemen change the law in that regard.

And still further on that point, as far as I am aware, nobody opposes changing the law in that respect which I refer to. I have not heard an objection to it. I do not know of a railroad man, I do not know a member of the Commission now or heretofore, I do not know an honest business man, who does not agree with everything I have tried to say, and who would not tell you that law ought to be changed so that the corporation should be amenable. It may be that some of these great combines who get these enormous sums in rebates, and who are not now amenable to the law, would oppose the amendment which I advocate, but I do not think that they will come here and tell you that they oppose it.

Mr. CORLISS. What information have you upon the subject with reference to the railroad corporations themselves—the officers of the railroads—as to their position upon that question?

Mr. KNAPP. All that I know about that, Mr. Corliss, is what they tell us. Over and over again railroad officials have said to me, "You can not expect—it is against human nature; appeal to your own experience, your own feelings—you can not expect that I will give testimony that may possibly result in the fining of my associate and friend over here who occupies a similar relation to another railroad to that which I occupy to mine. I am not going to become an informer against him."

But they all say that if the result of the disclosure and prosecution would be a fine against the other man's corporation they would not hesitate to furnish the proof and would actively engage in the prosecution.

That is the statement made to us. You can judge of the truth of it and the probabilities as well as I can.

Mr. COOMBS. Do you not think it would be a great relief and benefit to the railroad corporations if such a law was enacted?

Mr. KNAPP. I surely do. There is no reason why it should not be. And these two amendments, the one which would make the corporations themselves liable, and the one which would make the shipper liable, without the necessity of proving absolute discrimination—these two amendments ought to be made at once, at this session, if no others are made.

Mr. RICHARDSON. If you made a fine upon the corporations, you would have to rely upon the railroads to get the proof.

Mr. KNAPP. Not necessarily. I would call the shipper.

Mr. RICHARDSON. Would it not operate against him and influence him not to tell?

Mr. KNAPP. No, sir; not to the same extent.

Mr. RICHARDSON. Is it not the same thing that you find now in bringing a suit for damages against a railroad? An employee does not like to testify—

Mr. KNAPP. That may be true; but I think it would be immeasurably easier than it is now.

If its agent makes a rebate or makes a secret rate much lower than the published tariff, why shouldn't the corporation be liable? Can anyone furnish a reasonable answer? I have never heard of any.

And bear in mind another thing, which is that the two amendments which I am speaking of now would not increase the power of the Interstate Commerce Commission one iota.

Mr. MANN. If a man wanted to ship a carload of furniture from Georgetown to, say, Albuquerque, N. Mex., could he get a special rate, or would it be local rate all the way?

Mr. KNAPP. That would depend upon whether there were joint through rates from Washington to Albuquerque. If not, he would have to ship at the sum of the locals.

Mr. MANN. Is it a common practice, or is it not, among the railroads in a case of that sort to make a through rate?

Mr. KNAPP. Yes, sir.

Mr. MANN. Where there are no published through rates?

Mr. KNAPP. No, sir; I think not. They have no right to do that. The statute prohibits it, and they would offend the law if they did it, and I do not think it happens.

Mr. MANN. So that where there are no published joint rates it must be the sum of the local rates under the law?

Mr. KNAPP. It must be the sum of the local rates under the law. But, in point of fact, there has come to be such an enormous interchange of traffic, the movement of products is so extensive and so generally distributed, that there are joint through rates applying to pretty much everything, and between all the important places in the United States, or if there are not, then a joint through rate will apply between large centers, and the actual through rate would be made up of the local rate up to the point where the through rate commences. For instance, there might be a joint through rate from Washington to Albuquerque, and not a joint through rate from Alexandria, say. In that case the rate from Alexandria to Albuquerque would be made up of the local rate from Alexandria to Washington and the joint through rate from Washington to Albuquerque.

Mr. MANN. I understood that it was not an uncommon practice, and under this section of the bill the shipper would be liable to a \$5,000 fine.

Mr. KNAPP. All I can say is from my general information. From what I have observed and learned, I do not believe there is any such practice.

Mr. MANN. I thought you would know—

Mr. KNAPP. I do not believe that secret rates, or special bargains, take that form. I do not think it very often happens that the equivalent of the joint through rate is given when there is no joint through rate, because, as I said, there are joint through rates pretty much everywhere, and if there is any considerable amount of traffic the railroads are generally willing, and it is to their interest, to make a joint through rate.

I was saying a moment ago that the passage of these amendments would not enlarge the powers of the Commission at all, not in the slightest. When you make a transaction a misdemeanor, you practically remove it from the authority of the Commission. What I am

asking is that the Federal courts and the Federal district attorneys be furnished with the laws under which they can act. True, of course, the Commission in that case might be able to assist the prosecuting authorities in getting evidence, and might aid them by its agents in conducting trials, but the authority of the Commission is not increased a particle by these amendments. We can not make any order not to pay a rebate. The statute says that it is a misdemeanor to do it. Of course an act of Congress is a good deal more powerful thing than an order of the Interstate Commerce Commission.

Mr. MANN. A year or two ago I had occasion to ship some freight from this city through Chicago to Grand Crossing. The rate given me here was \$25. When it got to South Chicago, it was about \$60, and when it got to Grand Crossing it was about \$70. I paid the freight. I never found out which was the right freight; but the company rebated to me the amount over the rate which they gave to me. Now, possibly under this law I would be liable to a \$5,000 penalty.

Mr. KNAPP. That is conceivable.

Mr. MANN. How could I know; how could I tell in advance? I go to the proper authority and obtain a freight rate.

Mr. KNAPP. I have not had anything personally to do with the preparation of any particular bill. I do not know what you refer to; but I assume—

Mr. MANN. I supposed that you knew that the Nelson-Corliss bill is the one that we are speaking of.

Mr. KNAPP. I assume, of course, that the shipper is not liable unless he knowingly gets a preferential rate. I certainly am not here asking nor advocating that if a shipper goes to a freight agent and asks what the rate is and is told and pays that rate, honestly supposing that to be the lawful rate, that he could be indicted and fined if it turned out afterwards that that was not a legal rate.

Mr. DAVIS. Would the case that Mr. Mann suggests be a rebate in that sense of which we are speaking? Would not that be rather a refund?

Mr. MANN. It would depend upon what was the proper rate. I do not know and never did know. I know that I made a kick.

Mr. DAVIS. Would that not be giving back a part of the original rate, what was originally charged, while this would be refunding merely the excess over the original charge?

Mr. KNAPP. It would be refunding the excess over the tariff rate.

Mr. MANN. Perhaps I got the wrong rate here. Perhaps the rate that I paid was actually the tariff rate. I never made any further inquiry.

Mr. KNAPP. It was very likely an overcharge. We correct those matters every week in the year.

Mr. ADAMSON. That is what the innocent would have to depend on. He is presumed to know the law, but not the fact.

Mr. KNAPP. It is perhaps not an inapt way of putting it.

Mr. STEWART. Would not Mr. Mann be affirmatively guilty, having accepted this rebate?

Mr. KNAPP. No, sir; I do not think that, because I think it would have to be alleged and proved on the trial that he knew what was the rate.

Mr. STEWART. Would not the fact of his receiving the rebate be sufficient to go to the jury, unless he rebutted the presumption of guilt?

Mr. KNAPP. That would have to be proved on the trial.

Mr. STEWART. I mean if they had that proof alone would it not be sufficient for the prosecution to go to the jury with if Mr. Mann offered no defense?

Mr. KNAPP. Possibly it would.

Mr. MANN. Clearly, in that case, if the railroad company was guilty I was guilty, under the provisions of this Corliss bill.

Mr. KNAPP. Yes, sir, I think—I do not know—that might not be so, Mr. Mann. That is to say, the railroad agent might know that the rate he gave you was not the published rate, and you might honestly think that it was.

Mr. MANN. Anyhow, you think that whatever bill is passed should so provide that the shipper should not be punished unless he intends to offend?

Mr. KNAPP. Certainly not. As a matter of practice there are a great many shippers—particularly the smaller shippers, the infrequent shippers—who do not know what the published rates are.

Mr. ADAMSON. I do not think that language only would change the situation at all, because that is common law. He is presumed to know what the law is, and if your Commission is ever authorized by law to make rates, then rates are laws, and not facts, because it is legislative.

Mr. KNAPP. That is another question. We may come to that later. I am not prepared to accept that proposition.

Mr. ADAMSON. He says that it does not add anything to the law as it exists now; that a man can not be convicted under the existing law unless he has the intention to do wrong.

Mr. KNAPP. Yes, sir; certainly not.

Mr. SHACKLEFORD. What you say is that the presumption of the law to-day is such that it throws the negative upon the shipper—puts the burden on the shipper to prove that he is not guilty?

Mr. KNAPP. All I can say is that I am not advocating the proposition that a shipper is liable to be fined, not knowing what the rate is, who pays a rate that is asked, honestly believing at the time that it is the proper rate.

Mr. MANN. The difficulty we find is in providing some means by which the guilty should be punished and the innocent not be punished under the law.

Mr. KNAPP. It seems to me if the language is, as I assumed, of course, that it was, that the shipper who knowingly aids or abets the carrier in making a secret rate shall be punished—it seems to me that is the situation—

Mr. ADAMSON. If you are going to regulate rates by law, do you not think it is better for the shipper to look to constituted authority for rates and not to the railroads?

Mr. KNAPP. That would be impracticable. The shipper would not want to send to the office of the Interstate Commerce Commission to find out what the rate is before he ships.

Mr. ADAMSON. Do you not think it would be to his interest to do it, or very wise to do it?

Mr. KNAPP. Of course the present law is, and there is no proposition to change it, that the carrier shall post in two conspicuous places in every one of its stations the tariff, so that the shipper has an opportunity to ascertain what the rates are.

Mr. ADAMSON. Yes; that is giving them their constituted authority in that way.

Mr. KNAPP. Yes, sir; in the manner that the law provides it shall be furnished him for that purpose. But what I would say is that in the ordinary course of business the large shipper knows exactly what the rates are between all points, and he knows to the last cent what the rates are and the route and the combination which will give him the lowest possible rate under the tariff.

But the occasional shipper may be a man who, if he consulted the tariff schedule, would have difficulty in knowing what the rate would be on a cargo of furniture, for instance, and he would naturally ask the agent what it was. Now, if he takes in good faith what he is told and pays what he ought to pay certainly he ought not to be indicted.

Mr. MANN. I do not see how putting the word "knowingly" in there would help that man out. The guilty action lies in avoiding the tariff. Now, the language of the Corliss bill is:

Any person who procures, or solicits to be done, or assists, aids, or abets in the doing of any of the aforesaid acts—

If a man gets a rate, he assists in doing the act which is declared illegal. It does not make any difference if he knows it is illegal or not. He knows that he does the act, and he does that part of it knowingly. That is all your "knowingly" refers to.

Mr. KNAPP. He knows the rate he gets, but he may not know it is or is not the published rate and the rate that he ought to pay. That is what "knowingly" means.

Mr. MANN. Putting "knowingly" in there would not affect it any. Under the bill we have been discussing, and in a case of that sort, the court has no judgment in the matter except finding the man guilty and ordering him to pay a fine of \$5,000.

Mr. STEWART. In the Corliss bill it does not say that the shipper must "knowingly" violate the published rate.

Mr. KNAPP. I supposed that it was there, as I say. It is in the present law. The word "knowingly" is used in the present law, and I suppose with that meaning and for that purpose.

Mr. MANN. I suppose you would not say that the traffic manager of that railroad company could escape. He said that he gave me the rate. I did not know what the published rate was.

Mr. KNAPP. The individual might.

Mr. MANN. Oh, no.

Mr. KNAPP. I do not know; he might do so; but query: Whether the corporation could escape?

Mr. RICHARDSON. Would not Mr. Mann, in the case he has used as an illustration, where he accepted that rate, where that rebate was given him and he accepted that, make himself a conspirator and jointly liable with the company?

Mr. SHACKLEFORD. Not if he received back an overcharge.

Mr. KNAPP. Perhaps I do not quite appreciate your question.

Mr. RICHARDSON. Would not he be an accessory after the fact if he participated in it, and now when he received it back if it was an illegal charge, an unjust one, would he not make himself liable?

Mr. KNAPP. The offense is not in doing the thing, but in "knowingly" doing it.

Mr. RICHARDSON. Then when he accepted the rate would he not—

Mr. KNAPP. No, sir; he could not be made an accessory after the fact after the offense was committed, because he did not know at the time that the rate he paid at the time was not the published rate.

Mr. WANGER. As I understand it, the rebate may be perfectly justifiable and proper to correct an improper charge?

Mr. KNAPP. Yes, sir; and it is often our experience. These matters are adjusted very frequently through our office, where there has been an overcharge.

Mr. ADAMSON. But that is not what you technically call a rebate?

Mr. KNAPP. We look it up, and if it appears that there is an overcharge the matter is always adjusted.

Mr. ADAMSON. That is more a matter of mistake?

Mr. KNAPP. Yes, sir; that is an entirely different question.

Mr. ADAMSON. If you are going to invoke the pains and penalties of the criminal law and quasi-criminal law, do you not think you had better go at it under the rules of criminal law, and not be too squeamish about what you do? People are convicted every day under laws they never heard and did not know existed because they do things, and if you are going at this to remedy crying evils, had you not better make it to the interest of everybody to look and find out what the laws provide?

Mr. KNAPP. I am obliged to you for asking that question. It reminds me of what I had in my mind, but had overlooked so far.

In a sense you can, of course, test the propriety or value of a law by what could possibly be done under it; but ordinarily when you are dealing with a subject of this kind, or legislation of this kind, you take into account the ordinary experience of men. Put it exactly in the form, suppose, that you read in the Corliss bill, and the actual taking of a less rate, although innocently done, would subject a shipper to an indictment and fine; but do you think it would ever happen that such a man would be indicted as a matter of actual experience?

Mr. MANN. It has happened that innocent men have been indicted and found guilty.

Mr. KNAPP. Yes, sir; and as Mr. Adamson remarked, if you have an emergency to deal with, a permanent and distressful situation of affairs to deal with, perhaps you ought not to be too squeamish in applying the remedy, because occasionally an innocent man would be punished.

Mr. MANN. You know what the old maxim is?

Mr. SHACKLEFORD. Could you not obtain your remedies more easily if everyone was exempt except the corporation itself? Would not that promote the obtaining of testimony? Let the shipper be free, and then there is no reason why he should not disclose any transaction regarding an illegal rate, if nobody except the corporation itself, the carrier itself, were made amenable to the penalties. In our State we have a law against bribery, and the man who gives the bribe and the man who takes the bribe are both amenable under the law, and neither one has any motive for telling what has been done.

In this matter you say that both sides shall be punished, and you shut up both sides, and you have no means for getting the testimony of either; but if the shipper shall be liable, but the carrier alone, you will arrive at some way of meting out the punishment.

Mr. KNAPP. I do not care to take the time of the committee with any extended argument on that question.

Mr. WANGER. Do you think the remedy by indictment is the most expeditious and effective? Suppose a corporation was made liable to pay, say, at least the sum of \$5,000 for each offense, and suppose two or three times the amount of the preference, the rebate or the refund granted to be recovered in an action at law, would not that be a far greater deterrent; would not the proposition come right home to the officers of the corporation, "We may have to pay several hundreds of thousands of dollars if this thing is discovered?"

Mr. KNAPP. I think so.

Mr. ADAMSON. Do you think, under Judge Shackelford's idea, that it is all right to make it criminal for the corporations to do a thing and then offer inducements to all the balance of mankind to induce them to do it? Would not that be the Judge's idea?

Mr. KNAPP. I must say that such a proposition does not at the first blush strike one as fair, where two parties are engaged in a transaction and one of them is held to commit a crime and the other not.

Mr. ADAMSON. If a thing is wrong, ought not everybody who has anything to do with it be subject to prosecution?

Mr. KNAPP. Certainly, that is true. But on the other hand, the wrongdoing is of such a nature that the most effective and useful method of correcting it or preventing it ought to be adopted. That method may be by allowing one of the parties to escape. Now, if that is the proposition, I am not here to oppose it by any means.

Mr. SHACKLEFORD. Not to punish crime, but to relieve the shipping public from these evils; that is the thing that you are trying to do.

Mr. ADAMSON. You are talking about making criminal law, though?

Mr. KNAPP. Yes, sir.

Mr. ADAMSON. It ought to be made with equality, justice, and in accordance with the time-honored rules of criminal law.

Mr. KNAPP. I have assumed, as I say, that the law would remain as it is, making the shipper liable as well as the carrier; but if it is to remain in that way, then I want the shipper liable for departing from the rate without being obliged to show that an actual discrimination in his favor resulted.

Mr. ADAMSON. It should result, then, in making the shipper liable, given this view of it, that where you go and induce the carrier to give a reduced rate you injure me, and I have just as much fault to find with you as I have with the corporation, and you are just as guilty as the corporation.

Mr. KNAPP. Yes, sir; because the man who pays the higher rate suffers from the fact that his business rival has the same service at a lower rate. He, in a sense, is the real beneficiary. The railroad simply loses so much revenue; but it accepts the lower rates in order to get the business at all.

Of course a railroad is not going to give a reduction and suffer under a cut rate if it is sure to get the traffic anyway. It makes that secret bargain in order to get the business from some other road. The revenue of the railroad is depleted, and the man who really profits is the shipper who gets the cut rate, and I think in many circumstances the moral turpitude of the shipper is greater than that of the carrier. And it does not exactly satisfy me, speaking for myself alone, to say that in such a situation some subordinate traffic managers can be fined, and the men who have put hundreds of thousands of dollars in rebates into their pockets can not be reached. That may

be the most effective way to deal with the evil, but I am not here to advocate it.

The CHAIRMAN. Suppose a case of a conviction against the corporation, would you levy the punishment against the corporation or against the agent of a corporation?

Mr. KNAPP. I would do just as they do on the other side. I would make the corporation liable, and also its officers and agents, and also the shipper liable, and also his officers and agents. But I think there is much in keeping them both in from this point of view. Now, see what the actual situation is. Remedies of this kind must be applied by the Federal courts and the Federal district attorneys. All that the Commission can ever do is to furnish information on which they shall proceed. Now, each situation therefore ought to be inquired of and dealt with in reference to its peculiar circumstances, and when a case of extensive rebates or cut rates is brought to the attention of the Federal authorities, it might be a case where, in their judgment, the more guilty party was the shipper and the one more easily convicted the carrier, or it might happen that the more guilty was the carrier and the one more easily convicted was the shipper, and it seems to me that those who are charged with the responsibility of enforcing the law ought to have the opportunity, as they practically would under this proposed law, of deciding against which one of the parties they would proceed.

Mr. WANGER. I imagine it would not be very appropriate to proceed against both.

Mr. KNAPP. Yes, sir; ordinarily you have probably got to call only one to prove the case against the other, and when you call one and compel him to testify, he goes scot free.

Mr. WANGER. He could refuse to answer on the ground that he would incriminate himself.

Mr. KNAPP. No; he can be forced to testify, and being forced to testify, he is granted immunity. That has been taken up to the Supreme Court of the United States twice, and we have got that settled. The Commission can subpoena any person supposed to have knowledge of a wrongful transaction of the kind we are now discussing and compel him to testify, and if he refuses to answer we can go to a Federal judge and get an order compelling him to testify, and if he still refuses he may be sent to jail; he can not excuse himself any longer, because the statute which it was held gives him absolute immunity secures him his constitutional rights, so that he can be compelled to testify. And, as I have explained, of course everybody we call is granted immunity, and it is a practical question whether in a case of this kind the Commission ought to go on—

Mr. ADAMSON. Do you mean that he is entirely relieved from all danger of being tried and from the penalties in that case, or do you mean simply that that testimony shall not be used against him?

Mr. KNAPP. That was the law originally. That was no part of the interstate-commerce law, but it was a law that had been on the statute books for many years, that his testimony could not be used against him. The Supreme Court of the United States held that it was unconstitutional, that part of that statute did not secure to him the immunity which the Constitution provided for. If he was compelled to testify, that the knowledge hereby obtained might furnish clues which would lead to his conviction later on without the use of that testimony, and

that in order to secure him his constitutional right the offense which is committed must be considered to be condoned by the fact that he is called.

Mr. ADAMSON. I do not remember the case, but I would like to know if it was taken into consideration the fact that his testimony might tend to blacken his character—

Mr. KNAPP. If you will read the decision of the Supreme Court on that question you will find that very fully discussed. They said that society does not owe the duty to a man, who, under the Constitution, refuses to testify and confesses that he is a criminal, to protect his reputation. If it protects his person and his pocketbook he has had his personal immunity. That is all settled.

Now, gentlemen, that is all I care to say upon that branch of the case, upon the defective and unworkable condition of those provisions in the law which seek to prevent rate cutting and secret contracts. And those are two changes which, in my judgment, ought to be promptly made. This Commission called the attention of Congress to this defect in the law directly that it was ascertained; pointed it out fully in its reports to Congress, and has repeatedly done so since, and yet, now, for more than ten years we have been waiting for Congress to so change this law that the corporation, the carrier, could be indicted and punished.

And the failure, as a practical question, of efforts to enforce the criminal law is largely because the corporation carrier is not liable, and the failure, the inevitable failure, to convict the shipper results from the fact that he is not liable unless you can show not only that he got the lower rate, but that that lower rate operated as a discrimination in his favor and against somebody else in the same place and at the same time. And that, practically, you can not show. You can not show it certainly in the worst class of cases, where great aggregations and combinations of shippers use their influence to get secret rates and preferential rates, for there they all get about the same thing.

Now, I say, do one of two things; either leave the shipper out entirely, or else make him liable, the same as the carrier, if he knowingly takes a rate.

Mr. DAVIS. I was going to say, from my limited idea of the criminal law, I understand that it requires a good healthy condition of public sentiment in order to make a criminal law operative. Now, do you not think that if you undertake to make the shipper a criminal because he has done the best he could, that you are putting something in the law that will not stand; that evidently they must do the best they can with the railroad, and that you will never get that law enforced?

Mr. KNAPP. No, sir; because you assume that the shipper has done the best he could, and that is the case of the infrequent shipper. The thousands and millions of dollars paid in rebates are paid to men who do not need it and ought not to have it, and know perfectly well that they are violating the law.

Mr. DAVIS. Suppose some infrequent shipper, who rarely ships and does very little business that requires shipping, gets the best rates that he can. Suppose I want to ship some books and furniture from Washington and I go and get the best rate that I can, and I can not study

these things, I am made a criminal because I have gotten a rate less than the published rate.

Mr. KNAPP. I have said that I do not advocate that, and I do not think it is the intention of the legislative proposal.

Mr. DAVIS. Would it not make that statute practically inoperative?

Mr. KNAPP. No, sir; I do not think it would make it inoperative.

Mr. DAVIS. I do not think anybody would be proceeded against. I do not think you could find a district attorney who would prosecute a man who he knew had innocently and unintentionally gotten a rate less than the published rate.

Mr. SHACKLEFORD. He was not supposing that that rate he spoke of had been gotten innocently.

Mr. KNAPP. That is what I understood.

Mr. DAVIS. No, sir. Suppose I knew that the rate that I was getting from Washington to my home was not the published rate, and I should go and get the best rate that I could. Now, as the law stands I would not be a criminal; per se that would not be a criminal act. But you are going to make it criminal by enactment, and the American people have always supposed that the individual not only ought to make the best terms that he could with the railroad, but that it would be shrewd for him to do it. Now, you are going to make that per se a crime which is not per se a crime, and therefore it would make the law very unpopular.

Mr. KNAPP. I do not think so. I think nine hundred and ninety-nine business men out of a thousand do not want anybody to be able to get a secret or preferential rate.

Mr. DAVIS. One other question. You are going to use the word "knowingly." He must knowingly violate this law. The shipper must do it. Now, if that word were not there, the law, as I understand it to exist, would require it to be done knowingly?

Mr. KNAPP. I do not understand that to be the law.

Mr. DAVIS. How are you going to define the requisite knowledge and the means by which he must derive his knowledge?

Mr. KNAPP. That is a question of fact for the jury. This man knows that he got a rate not authorized by the tariff.

Mr. DAVIS. In order to make that operative at all, you would have to do it in this way: The rate must be prescribed and published, and if the rates were prescribed and published everyone would be charged with knowledge of them. Would you not have to do it that way; and if you did, would you not make the law unpopular?

Mr. KNAPP. No, sir; I do not think so. I think a large majority of the business men of the country are in favor of it, in favor of just what I am advocating. I think there are a few, and they are the men who least need the favor, and ought not to get it, who do not want it that way. They want to pocket the rebates. It is not the rebates, gentlemen; it is not simply the thousands and hundreds of thousands and millions of dollars which certain concerns get out of the public tariff; that is not what they are after. Of course whatever comes in that way comes in handy, and it amounts to a vast balance; but it is the command of the markets which they get, because their traffic is carried lower than that of other persons, which is valuable to them.

Mr. DAVIS. It is the large shipper you have in your mind?

Mr. KNAPP. Yes, sir. The small shipper to-day does not get any rebates.

Mr. DAVIS. Suppose he did get them?

Mr. KNAPP. He can not.

Mr. DAVIS. Suppose he got a less rate at the——

Mr. KNAPP. He can not do it.

Mr. DAVIS. Do you not make the entire shipping public uneasy, do you not create in them a sort of uneasiness, which if you put them all——

Mr. KNAPP. The uneasiness arises from the suspicion that the larger and the more powerful rival is getting a rate which the smaller man can not obtain. You let the business men of this country understand that no combination of shippers, no matter how powerful or how immense their business may be, can get one mill off the published tariff, and you will give a satisfaction and an assurance to the business world that nothing else can assure.

Mr. COOMBS. Is there any section of the country that is benefited over another by the rebate?

Mr. KNAPP. That is not easy to answer. If you will put a concrete question——

Mr. COOMBS. I want to ask you questions which are hard. We want the knowledge that you have, and I want to ask you just as hard questions as I can.

Mr. KNAPP. Very well. We were discussing this question before you came in, and we were mentioning the case where it appeared that habitually, for years, the packing houses on the Missouri River and at Chicago got very much lower rates than the published tariff. Now, what is a small concern at Indianapolis and Cincinnati or Des Moines or Davenport trying to do a little packing-house business against these packing houses that have 10 cents off on the tariff? They have to pay the published tariff. Railroad men do not give rebates to the little fellow.

Mr. STEWART. As a matter of fact, under the new law the district attorney would only look after the occasional shipper?

Mr. KNAPP. I said in answer to Mr. Mann's question that I did not think the district attorney would ever try to indict an incidental and occasional shipper who honestly and inadvertently got a rate which proved to be lower than the published tariff.

Mr. STEWART. It is only the large and continual—professional—shippers who affect this tariff?

Mr. KNAPP. Yes, sir.

Mr. COOMBS. What has the district attorney to do with it?

Mr. KNAPP. As a matter of fact he has not had much to do heretofore, because he could not get any facts on which to proceed.

Mr. COOMBS. You are going into facts now and not into the law. What would he have to do with it provided the law was amended as you want to have it amended?

Mr. KNAPP. If he had information leading him to believe that a given carrier had granted rebates to a shipper he would go to work and investigate to prove that fact.

Mr. COOMBS. If he was left to his own judgment he would be affected by the sentiment of the particular community?

Mr. KNAPP. Very likely; I think that might happen.

Mr. STEWART. Might he not be affected by the charge of the judge and the judgment of that particular court?

Mr. KNAPP. This gentleman refers to whom he should select for indictment.

Mr. COOMBS. These things would be done in this way. From your body you would bring such information before the Department of Justice as would result in instructions to the district attorney of some other place to bring proceedings. Is not that about the way it would be done?

Mr. KNAPP. Yes, sir; I suppose practically it would work out that way.

Mr. COOMBS. That is the general routine; that is the way the district attorneys bring indictments?

Mr. KNAPP. Certainly.

Mr. COOMBS. Where there is a central body which has supervision of matters the information upon which the district attorneys act comes before that body. Is not that the rule?

Mr. KNAPP. I suppose it is.

Mr. COOMBS. The district attorney never brings originally a case relating to a violation of the internal-revenue law, for instance; he goes by instructions to bring certain indictments?

Mr. KNAPP. No; if the postal laws or the import laws are violated I assume that some Government official having charge of the administration of those laws gets hold of the facts and goes to the district attorney, and he becomes the prosecutor.

Mr. RICHARDSON. Is it not your observation that under the operations of the interstate-commerce law for the past few years there has been a greater improvement in the conditions between the railroads and the shipping public?

Mr. KNAPP. In what way?

Mr. RICHARDSON. In all respects, in regard to rebates and everything else, is it not in a better condition to-day than ten years ago? Under the conservative policy which has been pursued, is not the relation of the railroads with the public far better than it was ten years ago?

Mr. KNAPP. I wish I could affirm your view, but I can not.

Mr. RICHARDSON. Then the Commission has accomplished very little good during the last ten years?

Mr. KNAPP. That does not follow.

Mr. RICHARDSON. Is there not an improvement?

Mr. KNAPP. I think the condition is very much better than it would be if there was not any law nor any Commission.

The CHAIRMAN. The hour for adjournment has arrived, Mr. Knapp and if you will now suspend you will have the stand when we resume to-morrow.

Mr. KNAPP. Very well.

Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, April 21, 1902, at 10.30 o'clock a. m.

WASHINGTON, D. C., *April 22, 1902.*

Mr. KNAPP. Some little time ago the Commission arranged for taking the testimony in certain cases at St. Louis and elsewhere, beginning on Friday of this week. Two of my associates, Mr. Prouty and Mr. Fifer, are going to attend to that duty. They will be absent for

at least a week for that reason, and to accommodate them I respectfully ask that they may be heard this morning and that I may be permitted to defer any remarks of my own until a subsequent meeting of the committee.

The CHAIRMAN. That arrangement will be satisfactory to the committee.

**STATEMENT OF HON. CHARLES A. PROUTY, INTERSTATE
COMMERCE COMMISSIONER.**

Mr. Chairman and gentlemen of the committee, as Chairman Knapp has stated, Governor Fifer and I are obliged to leave Washington tomorrow, and if we say anything we will be compelled to say it now. I had no desire, and have no desire, to address the committee; but there is one phase of this question that my associates think ought to be presented to the attention of the committee, and they desire me to present it.

I wish to say, before I begin that, a single word in reference to the matter which Mr. Knapp discussed yesterday, and that is the preventing of the payment of rebates. He called your attention to necessary amendments to the act in order to secure that end by criminal enactment. That is not to my mind the only way in which the payment of rebates can be prevented, nor is it the only way in which the bill that you have before you, which is called the Corliss bill, will effect that object.

Certain injunctions have been asked for and a restraining order has been granted to compel carriers between Chicago and Kansas City to observe the published rates. The effect of that injunction, if it is made properly and can be enforced against the carriers, is simply to raise the tariff rate which the packer pays from Kansas City to Chicago 5 cents. I believe that a more just way to reach that proposition is not to compel the carrier to maintain his published tariff, but to compel the carrier to publish and to accord to all the world the lower tariff which it has accorded to the favored shipper.

In other words, the only effective remedy, or one of the most effective remedies, which can be applied to prevent the payment of the rebate is to invest some tribunal in some way with the power to compel the carrier to put into effect and maintain in effect, under certain circumstances and for a certain time, the secret rate, the lower rate, which it has accorded to the preferred shipper. Any other remedy simply results in making the rate so much higher to the general public.

Mr. COOMBS. Excuse me; but the constitution of California established a railroad commission, and one of the provisions of the constitution is that that should be done. This commission is a judicial body or a quasi judicial body, has judicial functions under the constitution. Now one of the propositions in that was this: That whenever the railroads gave a rebate or lowered the rate with reference to any person and with reference to any points that that should become the basis of all future regulations and they never could thereafter raise those rates. You know the history of that?

Mr. PROUTY. I should suppose that provision would clearly be unconstitutional.

Mr. COOMBS. You think what?

Mr. PROUTY. I should suppose that that provision would probably be unconstitutional.

Mr. COOMBS. Do you know what the result of that was?

Mr. PROUTY. No, sir; that is not my proposition.

Mr. COOMBS. You say that is not your proposition?

Mr. PROUTY. No; it is not my proposition at all.

Mr. COOMBS. I understood it was; I misunderstood you.

Mr. PROUTY. No; as you stated, the law of California provides that if a railroad allows a lower rate than the published rate, that that shall be the basis for all future time.

Mr. COOMBS. I do not mean to state it that way exactly; but I mean to say that they shall not raise the rate.

Mr. PROUTY. A provision of that sort might bankrupt every carrier in California; it might deprive every carrier in California of his property without due process of law, and I say that that is clearly in violation of the fourteenth amendment to the Constitution of the United States.

The CHAIRMAN. Would it be, if they had voluntarily fixed that rate themselves? Would there not be a distinction between a rate made permanent—simply a rate that they had fixed and made permanent—and an arbitrary fixing of a rate by any other tribunal that would be confiscatory in its nature?

Mr. PROUTY. With respect to that particular tribunal, that might be so and might not be so held; but you must remember that the rates of one carrier necessarily fix the rates of every other carrier in competition with that carrier. If one line makes a rate from Chicago to New York, every other line makes a corresponding rate from Chicago to the Atlantic seaboard.

Mr. RICHARDSON. You say you think it is unconstitutional. That would deprive him of his property, would it not?

Mr. PROUTY. My own impression is it would be confiscatory, but whether confiscatory or not it would be unjust. But it is not unjust to apply the remedy within certain limits, because the railroads must take their chances on their competitors, and this is the only remedy that the railroads themselves have not applied with any degree of effectiveness to stop rate cutting. Take the Joint Traffic Association. It embraces all the lines which operate between Chicago and the Atlantic seaboard. It was managed by a board of managers. One of the things which that board of managers had power to do was to put in the rate over all those lines, and every line was obliged to observe that rate until it was taken out.

When rates became demoralized the only way the traffic association had of stopping that demoralization was to reduce the rate, and that was what they invariably did. And Mr. Callaway, of the New York Central Railroad, once said to me—I think it was in the presence of all the Commission—that that was the remedy; that no rate could be maintained that was radically too high, and that you had to reduce a rate to its proper basis or below its proper basis before you could secure its maintenance.

Mr. RICHARDSON. Would it not have this effect, also, if I catch your meaning correctly? As I understand it, a railroad that negotiates for a rebate of course does that secretly, that is a secret matter; it is prompted by the desire to take the freight from some other railroad.

Mr. PROUTY. Yes, sir; to get that traffic.

Mr. RICHARDSON. Now, it intends to make up what it loses by that rebate by charging somewhere else. So, if you were to establish the

rebate as a standard by which the railroad was to be governed, you would right it?

Mr. PROUTY. I think that is the most effective way of righting it. I do not think a criminal act can altogether right it, but I do not think there is anything that comes nearer to it than the power to make a railroad charge during such time as may be right and reasonable, and under such circumstances as may seem right and reasonable, the rate which it has accorded to the favored customer.

Mr. RICHARDSON. Does that not lead to the fact that you must make rates in some manner elastic?

Mr. PROUTY. What do you mean by the term "elastic?"

Mr. RICHARDSON. Between two given points, a maximum and a minimum.

Mr. PROUTY. Do you mean you should have one rate by one road and another rate by another road?

Mr. RICHARDSON. No.

Mr. PROUTY. One rate for one shipper and another rate for another shipper at the same time?

Mr. RICHARDSON. Yes; that is what I mean.

Mr. PROUTY. That is entirely foreign to the principle of the act regulating commerce. The English court has held that under the provisions of their act, which is similar to ours, you may accord to a shipper with a hundred cars a day a better rate than that accorded to a shipper with only one car of traffic a day. We hold in the United States that that matter can not be taken into account; that the little shipper, the little producer of dressed beef, who produces one car of traffic a day, or one car a month, is entitled to exactly the same rate on that car at the time he ships it that is accorded to the great packing house that gives a hundred cars a day. There is an inconsistency, and if you regard a railroad as a business proposition simply, which goes into the market and buys and sells its products, you can not defend that provision of the law. But the theory of this is that the railroad is a public servant, and it ought to accord to all shippers alike the same rates.

Mr. RICHARDSON. Can not you go a step further and say it performs a Government function?

Mr. PROUTY. I think so.

Mr. RICHARDSON. And it must be held to perform those functions just as the Government does?

Mr. PROUTY. I think so. Everybody does not agree with me there, but that is my idea.

Now, one thing in reference to one question asked Mr. Knapp yesterday, and that question was this: Mr. Knapp stated that the Interstate Commerce Commission had obtained testimony in Chicago last January, and I think last December, showing that rebates had been paid by certain railroads and to certain shippers, and the question was, Why had not these railroads been punished, and why had not these shippers been punished?

I want you gentlemen to distinctly understand what the Commission can do in that case and exactly what it can not do.

All the Commission can do under the law as it stands is to employ an attorney and request the Attorney-General and the district attorneys in the different districts of the United States to prosecute these offenses. We took this testimony; we employed an attorney whom

we believed to be a very competent one; we sent the testimony to the district attorneys in various districts where the offenses were committed, and we sent it to the Attorney-General of the United States.

Now, that, gentlemen, is all the Interstate Commerce Commission can do. I do not know who will be convicted, I do not know whether anybody will be convicted, I doubt very much whether anybody under this law as it stands can be convicted, but that is all that the Interstate Commerce Commission can do in the premises.

Mr. MANN. Has that matter been taken up before the Federal grand jury at Chicago or elsewhere?

Mr. PROUTY. I do not think it has yet; but, as I have said, that is a thing we have no control or jurisdiction over. We have instructed our attorney to proceed with all possible diligence and I suppose he will do so. But he is subject to the control of the Attorney-General of the United States.

Mr. MANN. Do you think they would proceed with any more diligence if you would give them a little more law?

Mr. PROUTY. No, I do not; but I think the amendment Mr. Knapp spoke for yesterday would be a little different kind of law which could be used to prevent the payment of those rebates. We can prove that every railroad operating between Kansas City and Chicago has paid those rebates. We can show, and the testimony shows, that in certain cases they paid, I will say for a case, 500 different shipments.

That can be proven. If this law absolutely provides that the corporation is subject to a fine of not less than \$500 for the forfeiture for every shipment made at the reduced rate, if that was the law, I do not think the shipment would ever be made at the reduced rate, because I do not think the railroad would dare take this chance; and if it did take this chance I think it could be fined in a substantial way and that the thing could be stopped, at least in a measure.

Mr. MANN. Your position, then, is that if a rate is fixed by the Commission, say, for two years, that a railroad company which is willing to make a lower rate shall not be permitted to do so at the risk of a penalty of \$5,000 for each time it transports at the lower rate?

Mr. PROUTY. My position is this: The law requires every carrier to publish whatever rate it makes. If the Santa Fe Company desires to make a lower rate than 23½ cents, it can publish that rate and put it into effect. This law says it shall not put that rate into effect unless it does publish it. My position is that it should simply be compelled to comply with this law or that the law should be amended.

Mr. MANN. This bill provides that the Commission shall fix the rate and that that rate shall remain operative for two years.

Mr. PROUTY. This bill—I have not read the bill, so it is a little reckless for me to say what it provides—

Mr. MANN. Then it seems the Interstate Commerce Commissioners have not taken the opportunity to read the bill—

Mr. PROUTY. Ordinarily when a bill has been referred to this committee a copy of it has been sent to the Interstate Commerce Commission with the request that the Commission read it and with the request that it (the Commission) come before this committee and present its views on the measure. That was not done in this case. We were invited the other morning to appear here, and we came here in obedi-

ence to that invitation. The chairman said yesterday that you had several bills before you for consideration.

I do not know that we are speaking to any particular bill. We are speaking to the general proposition of railroad regulation, as I understand it. But I suppose I do know, in a general way, what the Corliss bill is, because I suspect that I did read the bill upon which it is founded. I do not think the Corliss bill does exactly what you said. I think the Corliss bill does this: If a man claims a rate is high, or is wrong, he makes his complaint to the Commission. If the Commission, after a hearing of that case, after taking testimony and hearing all that is to be said in the case, sitting as a board of arbitration, comes to the conclusion that that rate is high, then it may order the carriers to make a lower rate for the future, which shall be operative for two years, or not to exceed two years. That order of the Commission is subject in all cases to review in Federal courts.

Mr. RICHARDSON. The order is not suspended, however, while you are taking it to the Federal courts for review?

The CHAIRMAN. I want to interrupt you one moment, right here.

Mr. PROUTY. Certainly.

The CHAIRMAN. I think the statement you have just made is an unfair one. Some days ago I directed the clerk of this committee in person to go to the chairman of your Commission and present the compliments of this committee and suggest that these hearings were in progress and that we would be glad to hear from the Commission. I learned afterwards, incidentally, from a member of the committee, that that had been regarded as offensive to the Commission. I then wrote to the Commission as politely as I knew how, asking that they would appear here. The reason why no bill was sent was because of the supposition, I suppose in the minds of every member of this committee, given to us through the newspapers and otherwise, that this was a bill prepared by the Commission. It was certainly not for any purpose of affronting the gentlemen that compose that Commission, for whom I have, for whom every one of us have, I think, the highest respect.

I know I speak for myself in that way; and for some of the members of the Commission, those I know, I have the warmest friendship, and I can not but think that your remark was a gratuitous one and entirely undeserved by this committee.

Mr. PROUTY. I intended that remark in no spirit of criticism to the committee or to any member of the committee. I was asked by a member of this committee if I had read this Corliss bill, and I told him I had not, and I told him why.

The CHAIRMAN. As I understand it, inferring that the reason why you had not done it was because an indignity had been put on the Commission.

Mr. PROUTY. No; I do not so intend to say and I do not so think. I simply stated the fact that hitherto—before this session—whenever bills of this kind have been introduced, either in the House or in the Senate, it has been the uniform custom to refer those bills to the Interstate Commerce Commission. This year that has not been done. Now, why it has not been done I do not know.

The CHAIRMAN. I think there are three members of that Commission that would not accuse me of any disrespect. Two of the gentlemen

on that Commission I have not the honor of the intimate acquaintance with that I have with the other three.

Mr. PROUTY. I certainly should not, for I have no reason to. I stated the fact as it existed, for the reason of another fact which Mr. Mann seemed to think as improper on my part.

Mr. MANN. I do not think anything you have said is improper.

Mr. RICHARDSON. Now, the last question I asked you.

Mr. PROUTY. I have forgotten what it was.

Mr. RICHARDSON. The question was: When the Commission fixed the rate and the railroad wanted it reviewed by the Federal court, that your order fixing the rate was not suspended at all but continued to go on. You favor that, do you?

Mr. PROUTY. I do not know what the provision in that respect in the Corliss bill is.

Mr. RICHARDSON. That is the provision in the Corliss bill.

Mr. PROUTY. You say pending the review of the court the order is enforced?

Mr. RICHARDSON. That the order is enforced pending the review of the court, yes; and then if the railroad takes it to the Supreme Court of the United States, the order still goes on for two years; the two years may expire before the Supreme Court passes on it; that is the effect of the Corliss bill.

Mr. PROUTY. I had expected that any bill which passes would contain the provision allowing the court in its discretion in all cases to suspend the effect of the order pending proceedings in review. Now, just what the provision of this bill may be I do not know.

Mr. RICHARDSON. That is different from the Corliss bill.

Mr. PROUTY. That is the provision that I have expected would be incorporated in any bill that might be reported by this committee or that might be passed by Congress.

Mr. RICHARDSON. In other words, the effect of your position, if I understand it, is to give full effect to the appeal; that is, while the appeal is pending your order fixing the rate is suspended too?

Mr. PROUTY. Not necessarily; it rests in the discretion of the court to say whether it shall or whether it shall not be suspended. That is a matter which I did not intend to speak about this morning, and which more properly falls within the province of somebody else, probably. But it is here, That the only way shippers can obtain relief ordinarily is by putting in effect the order of the Commission.

Now, if a community comes to the Commission and makes its complaint, and that complaint is heard and the Commission decides that it is well taken and that community is wronged, one of two things must happen. Unless that order goes into effect the community continues to be wronged and it has no redress. If it goes into effect and is wrong, the railroad is wronged and it has no redress. In other words, somebody must suffer. And the question is, if a competent tribunal has heard the case as an arbitrator and decided that question, why the decision of that tribunal ought not to remain effective pending a review of that question in a court. That is the proposition.

Mr. MANN. Would it be competent for the Chicago Board of Trade, for instance, to file a complaint under a provision of this sort, alleging that the freight rates between Chicago and the seaboard are too high, and have the Commission fix freight rates on everything? Can that be done, if it had the power, under one complaint?

Mr. PROUTY. I suppose if all freight rates were involved in one complaint, that the Commission might fix the freight rates on everything as you suggest.

Mr. MANN. Then under this section of the bill making a provision for a cutting of the rates it would be impossible for a railroad company, without permission of the Commission, to make a lower rate until two years had elapsed?

Mr. PROUTY. No; the railroad company is at liberty to reduce the rate at any time.

Mr. MANN. If the Commission can fix a rate and order the railroad company to adopt that for two years, how can the railroad company reduce the rate in the meantime?

Mr. PROUTY. The rate which the Commission fixes is exactly like the rate the Illinois commission fixes or the Iowa commission fixes. It is a maximum rate.

Mr. MANN. Ah, no; but that is exactly what we want to find out. In considering the bills we have had before we have questioned shippers, and they have not talked about a maximum rate; they have talked about fixing a rate in order to prevent the cutting of the rate. What is the idea of the Commission, that you would fix a maximum rate?

Mr. PROUTY. Yes.

Mr. MANN. And that the railroad can make a rate below that?

Mr. PROUTY. Yes; if they will publish the rate.

Mr. COOMBS. That is, it must be uniform?

Mr. PROUTY. Yes; uniform to everybody.

Mr. MANN. Then you do not think you ought to have the power to say what is a reasonable rate and determine that that rate shall be enforced, but simply that you shall have power to say what shall be a reasonable maximum rate?

✓ Mr. PROUTY. When the reasonableness of the rate is called in question, that is the only power the Commission should have. There are certain cases where discrimination is alleged where it might be necessary to determine maximum and minimum rates.

Mr. MANN. Discrimination is alleged everywhere.

Mr. PROUTY. Not that kind of discrimination. The Commission should have power, might have power, or would have power under this bill, to determine the differential between New York and Philadelphia, and that differential must be observed.

Mr. MANN. The only way you could determine that under any bill we have had here is by fixing the rate absolutely. Here are Chicago and Kansas City, for instance. You are not permitted under this bill to say what the differential shall be.

Mr. PROUTY. That is what we say.

Mr. MANN. But I say that you are not permitted under any bill that we have had here to say what the differential shall be, but you must say what the rate shall be.

Mr. PROUTY. As I have said, I have not read that bill. I know generally about a great many bills which the Commission would favor. I have never favored a bill, and I do not think it true of this bill, which does not permit the Commission to fix a differential, because that is the only thing the Commission is called upon to do—

Mr. MANN. I say the only way you can fix the differential is by fixing the rate.

Mr. PROUTY. I understand that we might fix the differential directly, just as we would fix classification, and let the railroads fix the rates. There was a great discussion between New York and Philadelphia and Boston some years ago as to what the differential between those three cities should be. The railroad referred that to a board of arbitration, of which Mr. Thurman was one member, and I think the chairman was a member; and that board of arbitrators fixed the differential between those places. Under this bill, as I understand it, the Commission would act in exactly that way; it would fix the differential and the railroad would fix the rates.

Mr. CORLISS. And the railroad has an immediate relief by applying to the court to prevent enforcements of the order of the Commission under this bill.

Mr. PROUTY. Certainly.

Mr. CORLISS. So it is not an arbitrary adjudication of the Commission for two years without power to immediately appeal to the courts?

Mr. PROUTY. I have never advocated giving to the Commission any power over a rate which could not be reviewed in the Federal court; in the circuit court first, in the circuit court of appeals next, and the Supreme Court of the United States finally. And my position is that if those tribunals all affirm that the rate is unreasonable it ought to be made right.

Mr. MANN. The bill here says that you should have the power to fix the relation of rates.

Mr. PROUTY. That is a differential.

Mr. MANN. That is what you mean by a differential?

Mr. PROUTY. Certainly.

Mr. MANN (reading):

In case of ordering a change in the relation of rates, if it shall become necessary, in order to establish or maintain a just relation thereof, to prescribe the rate or rates to be observed by either or all of the parties concerned therein, it shall be its duty so to do; and when a rate involved in any case is a joint rate it shall further determine the proportions, etc.

You think that would give you the power to say how much more should be charged from Chicago to New York than from Kansas City to New York?

Mr. PROUTY. Yes; it might.

Mr. MANN. How much less?

Mr. PROUTY. It might.

Mr. MANN. "It might;" of course it might. But would it?

Mr. PROUTY. Yes; I think it would. That power has to be exercised by somebody. As I say, it is now exercised by boards of arbitrators selected by the railroads.

Mr. MANN. Then, if the railroad companies concluded that they ought to reduce the rate from Kansas City they would not have the power to do so at all?

Mr. PROUTY. They must reduce the rate from Kansas City and Chicago at the same time, and that is done now; that is done to-day. The rate to-day between New York and Kansas City and Chicago and St. Louis were all made on a certain differential basis. When that rate to one point is reduced, the rate to every other point is correspondingly reduced.

Mr. MANN. Then you think the Commission should be authorized to determine absolutely how much more in every case shall be charged

from Kansas City than from Chicago, or from Minneapolis than from Chicago, or from Ogden than from Chicago?

Mr. PROUTY. I think that some public tribunal, to whom the people can apply as well as the railroads, should determine that question, which is now determined by boards of arbitration selected exclusively by the railroads. In other words, I think the Government should create a board of arbitration instead of the railroads creating that board to determine those questions.

Mr. STEWART. Do you not think the difficulty would be this: That the Commission should take the initiative and relegate the railroads to the courts for revision?

Mr. PROUTY. No, sir; I do not think so. My own view is that the rates should be fixed in all cases by the railroad company.

Mr. STEWART. Are you not begging the question when you say that the rates should be fixed by the railroad company, and that when they make the rebate that should be fixed; are not they always escaping those propositions and making a secret rate?

Mr. PROUTY. The secret rate and the published rate are two different things.

Mr. STEWART. You want them to publish their secret rates?

Mr. PROUTY. We want them to publish any favored rate they give anybody.

Mr. STEWART. Is not that the thing they are avoiding; is not that the vice in the whole proposition? How are you going to force them to publish those preferred rates they give to individuals? That is the vice of the whole proposition.

Mr. PROUTY. They publish between Chicago and Kansas City a rate of 22½ cents on dressed meats. They give to some favored shipper a rate of 18½ cents. Now, then, I would have somebody invested with power to order them to publish a rate of 18½ cents.

Mr. STEWART. That is the proposition they are dodging and will continue to dodge.

Mr. PROUTY. Suppose you publish a rate of 18½ cents, will they reduce that?

Mr. STEWART. In secret, yes.

Mr. PROUTY. They will soon come to a point where they won't do it.

Mr. STEWART. How are you going to force them to that low point?

Mr. PROUTY. They force themselves; they select the rates. If a railroad company publishes a rate of 22 cents and makes a rate of 18 cents to a favored shipper, let them publish the 18-cent rate. If they publish 18 cents as a rate and then make a rate of 15 cents to a favored shipper, let them publish 15 cents as a rate.

Mr. STEWART. Suppose they do not do it.

Mr. PROUTY. How are you going to compel them to, you mean?

Mr. STEWART. Yes; that is the idea.

Mr. PROUTY. If this Commission makes an order to the railroad company that it publish a rate of 15 cents, it can be enforced in two ways.

Mr. STEWART. How are you going to find out that they are giving this secret rate of 15 cents?

Mr. PROUTY. Well, that is the difficult proposition—

Mr. STEWART. That is the proposition we have to meet.

Mr. PROUTY. But you can find it out with sufficient certainty for this purpose, although you might not be able to find it out with sufficient

certainly to convict somebody under a criminal act. The attorney of one of the great railroad systems of the United States said to me the other day: "I have about got around to a point where I want the Commission to make the rates." I said, "Why?" He said, "Because if you did I think they would be better observed by the railroads than when made by the railroads themselves." But while there is considerable to be said on that proposition, while a majority of the States from which this committee come do substantially prescribe railroad rates, I can not believe that in those States the Interstate Commerce Commission ought to be charged with the duty of fixing the rates. Although the carrier is a quasi-public corporation it is a private corporation.

Mr. STEWART. But when we have ascertained by experience that they will not do it fairly then ought there not to be a power that will force them to fairness?

Mr. PROUTY. I have given my opinion on that.

The CHAIRMAN. You were about to give the two remedies.

Mr. PROUTY. The first remedy is to provide a penalty, as you do in Illinois. If the railroad does not observe the order it is subject to a penalty, and that penalty is made large enough so that rather than incur the penalty the railroad will observe the order. The second remedy is by an application to the court allowing the court to enforce the order by a mandatory remedy.

Mr. STEWART. Do you think a railroad company would care a continental for a fine of \$5,000; would that deter them?

Mr. PROUTY. A fine of \$5,000 against a railroad company amounts to nothing; but a fine of \$5,000 imposed against each offense amounts to a good deal.

Mr. ADAMSON. Suppose you also provide that from the day the published rate goes into effect each shipper may for all time recover from the railroad company for the expenses charged over the lowest rate charged for the day he ships?

Mr. PROUTY. Well, Mr. Representative, that remedy has been considered. There are a great many other remedies of that sort. I do not think any of them are entirely fair. I do not think any of them are entirely adequate. I think there is an adequate remedy and a fair remedy, and that that ought to be applied.

Mr. ADAMSON. They might help a little?

Mr. PROUTY. Possible those would help.

Mr. CORLISS. It would be a good thing for the lawyers?

Mr. PROUTY. Yes.

Mr. ADAMSON. If a man thinks enough of a case to pay a lawyer to go after it he can find him if it is meritorious.

Mr. PROUTY. I wanted to say one thing more in reference to the chairman's testimony, and that was this: The statement has been made a great many times that this law is all right enough as it stands; that the Interstate Commerce Commission is to blame for not having enforced this law. Now, it is the privilege of every American citizen when he is accused of a crime or dereliction of duty to be confronted with the specifications of the charge and with the witnesses to prove it, and, as a member of the Interstate Commerce Commission—my associates can say what they want to—if the charge is made here that the Commission has not done its duty in enforcing this law, I hope you will ask of the witnesses in what respect; and I hope you will

allow me to come here and show you what I can in respect to any transaction that may be referred to.

I am not conscious, since I have been on the Interstate Commerce Commission, in the five years I have been there, that I have ever omitted to do anything in my power to enforce the act to regulate commerce; and you gentlemen can not give this country a better service than to give attention to the powers of the Interstate Commerce Commission in that respect.

This law has been in effect over fifteen years, and it has produced in no material degree the thing which it was intended to produce. If the fault is with the Commission who are administering that law the people ought to know it. The law provides that a Commissioner may be removed for incompetency, and I am inclined to think that we have somebody at the White House now who would enforce that part of the law. If this Commission is incompetent, it should be removed. If the trouble is with this law, if no commission, competent or incompetent, can enforce this law, then the law should be amended; and it is your duty to find out whether the Commission is or is not competent, whether it has or has not neglected to enforce the provisions of this law.

Now, when somebody appears here and says that the Interstate Commerce Commission has not done its duty, he ought to be required in public—not in private—to say in what respect is the shortage of duty, and then allow us to meet that claim.

Now, I have already taken up so much time in answering these questions that I do not know that I ought to undertake to say what I intended to this morning. There are certain questions of evils which this bill seeks to remedy. One evil is the payment of the rebate, the departure from the published rates. Another evil is discrimination in the published rates. There are to-day the grossest discriminations in the published rates in favor of the Standard Oil Company. Another evil is of too high a rate. My own belief is, and has been, that the great danger is a rate absolutely too high. I do not want to belittle the evil of discrimination; it is the sore spot, it is the thing which hurts to-day, but it is temporary in its effects and the other thing is permanent in its effect, and if you will indulge me for fifteen minutes I want to present, rather than discuss the details of this bill, my idea on that subject.

In order to do that, I want you gentlemen to consider for half a minute what railroad competition is. You are told that we ought to rely on railroad competition to regulate the rates of this country or to secure a sufficiently low rate. What is railroad competition under the act to regulate commerce?

I will take two points that you gentlemen are all familiar with. Mr. Mann seems to be very much interested in this subject, and so we will take Chicago as one point and Omaha as another point. We will say there are three (as a matter of fact, I think there are four lines now) railroads competing for business from Omaha to Chicago. The act regulating commerce provides that the rate, those companies charge shall be a published rate open to all shippers alike. These three railroads all have business. How do they compete for it? One railroad may offer a better facility than another railroad, but the practical way, the only way in actual railroad competition, is to offer to one shipper a lower rate than is offered by his competitor. Suppose the railroad

competes under the law—not secretly and in violation of the law, as they do to-day, but competes openly—it observes this law, and puts in effect a published rate by one of those lines between Chicago and Omaha. What happens? Every other line has to meet that; the published rate must be the same between all three lines. And what effect does that produce on these three railroad companies? Have you increased the business? Very little, if at all.

I do not mean to say that a special rate may not build up some industry. I do not mean to say that railroad rates may not contribute to the general prosperity and in this way add to the traffic of the railroads; but the mere reduction of a rate between Chicago and Omaha does not materially increase the traffic over those lines. It does not make practically any difference with the quantity of corn raised west of the Missouri River whether the rate from the Missouri River to Chicago is 12 cents or 18 cents a hundred. So the only effect is this: You have reduced the revenue to every single line, you have injured every single line, and you have not benefited the lines.

Mr. ADAMSON. You do not think rate wars are beneficial to business?

Mr. PROUTY. No; I do not think rate wars are beneficial to business. Rate wars sometimes reduce rates——

Mr. ADAMSON. I want to ask you, then, if one line makes a low rate, legally publishing it, and forcing other rates down, and other railroads then meeting that cut, and then the first railroad publishing a lower rate and the other roads meeting that, thus inaugurating a rate war, would it not be necessary and right that the Commission should be invested with power to make a minimum rate; in other words, is it not right to do something to protect the railroad in such cases as well as the people in other cases?

Mr. PROUTY. That question came before the Commission early in its history, and Judge Coolidge said that the Commission had not such power.

Mr. ADAMSON. Ought it to have it, in order to meet such emergencies as that?

Mr. PROUTY. That is for you gentlemen; I do not think there are, or will not be in a short time, any emergencies of that sort. No; I do not think it is necessary for the Commission to have that power, but I do think it would be just to the railroads to give somebody that power. I think you ought to aim to protect and conserve the interests of the public. They are a great part of the public, and you can not have general prosperity without they are prosperous, and their interests should be considered by you.

Mr. ADAMSON. If we are going to take charge of the subject and do such regulation as the balance of the public want, ought we not to legislate in the interests of the railroads to prevent their destruction?

Mr. PROUTY. Perhaps so. I would not dissent from that.

This thing that you call railroad competition hurts every railroad and does no railroad any good. That is a proposition which you gentlemen must consider as the basis of all these investigations. It is not like competition in some other business. Your railroad is there and it has got to be used there; it has a certain business and that business must be done there and can not be done anywhere else. If you own a factory that does not pay, you can move it somewhere else, possibly; if you do not like one market, you can go into another market; but that is not so with the railroads.

It must be used there, to do that business there, and it soon becomes evident to every man who investigates this question at all that railroad competition, while it may add immediately to the traffic of a business, is suicidal in the end. Every railroad manager sees it. The first thing he tries to do is to make a traffic agreement—to agree on what these rates shall be. That does not amount to much, because it will not be observed. Then comes the following arrangement: He says that there is so much traffic; he says, "We will divide it between these three railroads." Then Congress passes a law and says, "You shall not pool." Then comes the traffic association. They say, "We will agree on some rate." And then comes the antitrust law and says, "You shall not maintain your traffic association."

Then, gentlemen, this thing finally gets back to the owners of this property, and they say, "We are paying for this nonsense. We, the owners of these three roads, are the sufferers," and the thing which can not be controlled through the traffic department, and never is, is controlled through the medium of ownership.

In some way or other those three roads are bound to get together. The owners of those three roads are bound to get together to eliminate that competition, which does not do anybody any good and which does everybody—from a railroad standpoint—harm.

Now, I said when the joint-traffic decision was made that that decision did more to eliminate railroad competition in the United States than any other thing which had happened for years. I believed it would. I said five years ago, when I first investigated this question, that there was but one possible outcome, and that was the consolidation of the railroads of the United States. My opinion would not be worth anything, and it was not worth anything then, but conditions to-day have verified that judgment.

You, gentlemen, have seen from the newspapers from time to time the extent to which these consolidations have proceeded. I doubt if you realize it fully, and I want to call your attention to it as an important phase of this problem, and one which has to be reckoned with in disposing of this subject.

I have in my hand here an article written by a gentleman named Kuneth. I do not know him, but I have taken this from the *World's Work* for February, 1902. I say I do not know him, and I attach no particular importance to his opinion, but I use these tables merely for the sake of reference. What do these show? Here we have, first, the Vanderbilt system, which embraces 19,500 miles of railroad. I do not take Mr. Kuneth's opinion for that; that fact is shown by the records of the Interstate Commerce Commission—with this exception: The Northwestern Railroad is reckoned as a part of that system, and while everybody understands that the Northwestern Railroad is a part of the Vanderbilt system, the records of our office would not demonstrate that fact. But you can safely say to-day that the Vanderbilt system embraces 19,500 miles.

Next we have the Pennsylvania system. That system is set down here as embracing 14,350 miles; but that computation includes the Baltimore and Ohio Railroad. The Chesapeake and Ohio Railroad and the Norfolk and Western Railroad are treated as controlled jointly by the New York Central and the Pennsylvania. I think, in fact, they are controlled by the Pennsylvania Railroad and should be added to

the Pennsylvania system; making that system 18,000 miles, in round numbers.

We know that from the records of the Interstate Commerce Commission.

We have next here the Morgan-Hill system, which embraces roads in which Mr. Morgan is most prominently interested and which he controls, and they aggregate here 37,500 miles.

Now, with respect to that, we know from the sworn testimony before the Commission that Mr. Morgan and Mr. Hill control the 18,000 miles of road embraced in the Northwestern merger. It is known and assumed by everybody that Morgan controls the Southern Railroad.

Since this article was written I have added 6,000 miles to the mile age given here, because Mr. Morgan to-day controls the Louisville and Nashville. It is somewhat remarkable how these things happen up in New York. There is a flurry in the stock market and something has been done, and nobody knows exactly what. Somebody says Mr. Gates has it, and another man says Mr. Rock Island Road has it; but in two or three days Mr. Morgan says, in reply to an inquiry, "I own it."

Mr. Gates says, "I thought I did, but I didn't," and Mr. Belmont says, "I did, but I don't. Mr. Morgan owns the Louisville and Nashville."

Add that to this statement here and you have 43,000 miles of road which Mr. Morgan controls to-day. I think I can say in respect to that, taking this transaction in Louisville and Nashville, that the testimony given before the Commission, and from the records of the Commission, that that statement is correct.

We have here now the Gould system, of which the Missouri Pacific is the nucleus, and about which I do not pretend to know so much, and I do not know whether the records of the Commission would show it or not. I have to take that system alone, as Mr. Kunith gives it, at 16,000 miles.

The chairman suggests that when the reports for this year are in they will probably show that fact. That leaves the Harriman system, which is set down here at 21,000 miles; and in respect to that I will say we know that from sworn testimony given by Mr. Harriman before our Commission.

Now, gentlemen, what is the grand total? One hundred and fourteen thousand miles of railroad controlled by five different systems, or five different persons. You have left the Acheson system, the Rock Island system, the San Francisco, and the Milwaukee, and those are the only important independent systems there are. Those aggregate 21,000 miles. When you have added, gentlemen, to the 114,000 miles that I have stated the 21,000 miles now independent you have a monopoly of the railroads of this country in the hands of five men. You say there are 200,000 miles of railroad. That is right; there are 200,000 miles of railroad. There are 70,000 miles of railroad left. But what railroad? Seventy thousand miles of railroad that does not begin anywhere and does not go anywhere; 70,000 miles of railroad that is absolutely dependent for its existence upon these five great systems.

Now, gentlemen, you may talk about railroad competition, you may rely upon railroad competition to reduce rates or to regulate rates, but there is no railroad competition. When five men seated around a

table in the city of New York can say what the rate on grain shall be from Kansas City to the Gulf and from Kansas City to the seaboard, from the Missouri River to the seaboard, and from the grain fields to Chicago and Duluth, you have not any more competition in the movement of grain. When five men can sit down around a table in the city of New York and say the rates shall be so and so, "if at the end of the year this thing does not pan out to be as we think it ought to we will make it right," you have a pooling arrangement that can never be reached by any law. One of two things has got to result. Either these five men will agree upon some *modus vivendi*, upon some apportionment of the territory of this country, as they have done in England to-day, with the result that they have the highest freight rate there in the world, or they will become partners, or one man will buy out the other four.

Now, gentlemen, when you have a condition in this country where one man virtually controls its railroads, what are you going to say about it? We asked Mr. Harriman that question, and we asked Mr. Hill that question, and Mr. Harriman and Mr. Hill both said: "You need not be at all alarmed; we will take care of the public; we will reduce freight rates." Gentlemen, I want to read to you, for I drew it up, a statement showing the appreciation of the properties embraced in the Northwestern Securities Merger for five years. I compare March in 1897 with March in 1902, and with this result:

Northern Pacific common, in 1897, was worth 12. To-day it is worth a trifle above par. A gain on \$80,000,000 of \$72,000,000.

Northern Pacific preferred was worth 35. It is worth par to-day. A gain on \$75,000,000 of \$50,000,000.

Burlington was worth 72. It has been retired on the basis of 200. Converted into bonds on that basis. A gain of \$128,000,000.

The capital stock of the Great Northern was then \$40,000,000, and it sold on the market for 120. The capital stock to-day is \$100,000,000, and it sells on the market for 180. A gain of \$132,000,000.

This makes in all a net gain on the market value of those stocks of \$382,000,000 in five years. Money enough to build and equip two lines of railroads from the head of Lake Superior to the Pacific coast.

What is a freight rate? A freight rate is a tax on everything which enters into the life and commerce of this country. You have not got a stitch of clothes on you which has not borne that tax. You do not eat a single thing which does not bear that tax, unless you dig it in your own garden or buy it from some laborer who digs it in his garden. And to say that one man shall determine what every other species of property shall pay to his property is a thing which I do not believe the people of the United States will submit to. Mr. Hill says in his sworn testimony that a man who charges too high a rate is a pirate. I do not think that. The question of the rate, a reasonable rate, is a matter of opinion. Mr. Hill's opinion might be one way and your opinion might be the other way.

So I do not think that, at all. But I do think this: The history of all time has shown that when you give a single individual power over the property or the liberty of his fellow-man and do not restrain or control that power, he abuses it. If the railroad property of this company has the right, without control, to say what tribute other property shall pay to it, it will abuse that power.

Now, you say that is a theory. You say your rates are still falling.

These operations began, you see, years ago. I say to you that rates are not still falling; I say to you that rates are advancing—that there is a steady advance of rates in all parts of this country to-day. This is shown by the published schedules on file with the Interstate Commerce Commission. It is shown even by the rates per ton per mile, which is a poor indication of the actual rate, but which has advanced for the last two years, and undoubtedly, when our computations are completed, they will show a higher rate per ton per mile for the year ending June 30, 1901, than for the previous year.

If you could sit in an office, as I do, receiving complaints from all parts of the country of advances here and advances there, you would understand in a way that you can not understand how this process goes on.

If one man owned all the railroads of this country he could not charge what rate he wanted to; he would not be fool enough to make any sudden or marked advance. What he would do would be to maintain rates. What does that mean? To just maintain the present published rate? Mr. Morton, of the Atchison Railroad, in testifying before the Commission some time ago, said that departures from the published rates cost his railroad between \$500,000 and \$1,000,000 a year. His revenues are about one-fortieth of the entire revenues of the railroads of the United States. Now, assume that every other railroad exceeds the rate to the same extent that the Atchison Railroad does, neither more nor less. What does it mean? It means this: That a simple maintenance of the published rates adds to the net revenues of the railroads of this country \$20,000,000 a year. On a 4 per cent basis it adds to the capitalization of this country \$500,000,000; it puts into the pockets of somebody \$500,000,000—the owners of these stocks and securities.

There is another thing. I am sorry I have not time to elaborate more, and I know it is rather uninteresting testimony, but it is important that you gentlemen should have these things in mind, because they go to the basis of this whole question.

The cost of transporting traffic is decreasing every day. Grades are reduced, curves are cut out, the power of locomotives is increased, and the result is to reduce the cost of transportation. The sworn testimony of the manager of the Lake Shore Railroad before the Interstate Commerce Commission not long ago showed the average carload of grain from Chicago to New York was 60,000 pounds. Fifteen years ago that was probably 30,000. He said that the carload of the future would be nearer 100,000. He further said that one engine would draw 50 cars from Chicago to Buffalo, and doubtless the same engine would draw the same number of cars from Buffalo to New York.

Now, observe for a minute what that means. In 1885 the average carload was 30,000 pounds, and the cost at the present rate from Chicago 17½ cents. The railroad would receive for hauling that train load \$2,625. To-day the average carload is 60,000 pounds, and the railroad would receive for hauling it, gross, \$5,250. When the average load is 100,000 pounds the railroad will receive for hauling those 50 cars \$8,725. Captain Granner testified that on his line 50 cents a train mile would probably cover the cost of movement. Taking out the cost of movement, \$2,100 in 1885; \$4,700 in 1900; \$8,200 in 1901.

There is another thing. The traffic on these railroads is increasing, and as you increase the density of traffic you can move it cheaper; the

rate ought to decline. These gentlemen say that the cost of their supplies is increasing, and perhaps they are; but statistics just published by Bradstreet show that for the year ending December 31, 1901, the gross revenues of the railroads increased 12 per cent and the net revenues increased 16 per cent.

Now, why is it? When the cost of moving traffic is increasing, when the density of traffic is increasing, when gross revenues are increasing, and net revenues increasing still more rapidly, why is it that the freight rate also is increasing? It is because you are removing railroad competition.

Now, they say that there is no such thing as railroad competition. At the risk of wearying you I will cite one instance, because it arises in the sworn testimony taken by this Commission.

The rate from the Missouri River to New York on grain used to be 29 cents a hundred pounds. I think it was about that in 1892. In 1899 that rate had fallen to 12 cents a hundred pounds. The Commission had investigated that question and had declared that 23 cents was a reasonable rate. We thought we would investigate it again and find out what it was that occasioned this low rate from the Missouri River to the seaboard.

We summoned before us all the traffic managers of the leading railroads, and they all testified, without one single exception (this was in the winter and there was no water competition), that the cause of that low rate was railroad competition between the carriers themselves. What is the rate to-day from the Missouri River to New York? I think it is 18½ cents; and why is it 18½ cents to-day as against 12 cents three years ago? For this reason: You have eliminated the most troublesome factors in that competition situation. The Baltimore and Ohio and the Norfolk and Western and the Chesapeake and Ohio are to-day controlled by the Pennsylvania. The lines north of Pennsylvania are controlled by not over two men. That is the reason that the farmer west of the Missouri River pays to-day 5 cents a hundred pounds more—yes, 6 cents a hundred pounds more—than he did three years ago for the transportation of his grain.

I do not say, gentlemen, that the rate is too high now. I am not discussing that question at all; but I am only saying to you that this competition which has been relied upon in the past is a thing of the past and that you have to put something else in the place of it. Now, what are you going to do? What is the remedy? The obvious answer is, Compel competition by law. That is what Governor Van Sant says. Dissolve the Northern Securities Company. That is what the Attorney-General says. Enforce the law against trusts and monopolies.

Now, the law ought to be enforced. But suppose you dissolve the Northern Securities Company, what have you gained? Those railroads are still owned by the same men, they are still friendly, you can not by any possibility compel them to be enemies and to compete as enemies. Take all these other mergers. Mr. Morgan has bought this stock in the open market. Can you deprive him of it? And suppose you could. Suppose you could break up every railroad combination that has been formed in the past five years in the United States or in the last ten years. Suppose you could destroy the New York Central system and the Pennsylvania system and the Harriman system and the Gould system.

Suppose you could enforce the antitrust law and prevent all com-

bination between railroads and all agreeing as between railroads. What then? My friends, you would have in this country, in my judgment, a state of chaos, a universal bankruptcy in the railroad world. You can not apply that remedy, and you do not want to apply that remedy.

Now, there is a remedy which you can apply. There is a remedy which is perfectly just to everybody, and that is the remedy which we ought to apply. If you ask me what the remedy is for the steel trust, I will say I do not know. I do not know. I am told that trust charges to-day \$14 more for rails than a ton of steel rails cost. Now, I do not know how we are going to prevent it. But if you ask me what the remedy is for railroad monopoly, I have no difficulty, and you have no difficulty, in answering that question. The courts in every State of the Union have decided, the Supreme Court of the United States has decided, that the railroad is a public servant, that its rate is subject to public supervision, and the only way in which you can correct these evils is to exercise in some form, in some proper form, some supervision over the railroad rate.

In closing what I have to say I will take a particular case. In 1900 the railroads operating in official classification territory advanced the rate on hay from sixth class to fifth class. They tried to do it for ten years, but had been unable to do so. Certain shippers of hay brought a complaint before the Interstate Commerce Commission complaining that that advance was unreasonable and asked an investigation, and we have been investigating at great length that question.

It was said in the argument, and perhaps appears in the brief, that the average advance on all hay shipped in official classification territory would be about 2 cents a hundred pounds only, a thing so insignificant, said the attorneys for the railroads, that no shipper who pays it could realize it. This classification does not apply to all the hay shipped in the United States.

It applies, however, to perhaps one-half, perhaps two-thirds of it. But suppose for one minute it applied to all the hay shipped in the United States. What does it mean? We raised last year 50,000,000 tons of hay in the United States. Of that 50,000,000 tons, we shipped by rail 7,000,000 tons. This is an advance of 40 cents on every ton, or of nearly \$3,000,000 on all the hay shipped in this country—\$3,000,000 taken out of the pockets of somebody and put into the pockets of the owners of our railroad properties.

Now, gentlemen, if that is right, it ought to be done, and I want to say to you that I do not know, although I have heard all this testimony, whether I think it is right or wrong; yet I do not want to be understood as expressing any opinion about it, for I have not done it. I say, If it is right, it ought to be done; if it is wrong, there ought to be some way in which the people of this country who are interested in that matter can obtain relief.

Now, there is no way in which they can obtain relief unless you provide some tribunal which has power to inquire into the reasonableness of that rate and, if it finds the rate unreasonable, to make it right. That is the sum total of my proposition.

I do not care to discuss to-day the ways or the means of doing it. It is said, Let him bring a suit. Mr. Hill said in his testimony before the Commission, "Let him bring suit." Who is going to bring suit? Somebody who is damaged to the extent of \$25—and no one person may

be damaged more? Mr. Harriman said in his testimony, "Let him bring a suit." I said "Please cite the Commission one instance in which a court has ever rendered final judgment granting relief in a case like that." He said, "I am not a lawyer." I said, "You have money enough to hire a lawyer; get the best counsel you can, try and furnish this Commission with a memorandum showing one single case in which it has ever happened that a court of final resort has given damages for a thing of that sort." He has never furnished that memorandum, and my belief is that no such case can be found.

While the unreasonable rates and the unreasonable exactions of railroad companies have elected legislatures, abolished courts, and led to the most violent political convulsions, no ease, no relief, has ever been obtained from the courts.

And that is the reason why the States have exercised that power. The members of this committee come from 16 different States. Of those 16 States, 10 either make or supervise the rates. I include in that the State of Michigan. The State of Michigan has never made or supervised the freight rates. It has made the passenger rates, and its commissioner has some power over the passenger rates. But in the other 9 States they make the rates direct. Illinois does, Iowa does, Missouri does, Alabama does. As I have said to you, I do not advocate that; I think the railroad companies should make their rates first. But when those rates have been made, in some way or other they must be supervised.

Now, a rate is profit. You have to deal with that rate in the most delicate manner. You have to be extremely careful that you do not do any injustice to the railroads. You can not protect the public unless in some way or other you do it.

Now, there is just one other observation, and that is that you must not only do it, but you must do it now. Said a Senator of the United States to me the other day, "We can control these rates." "Yes," said I. Said the Senator, "We can control them whenever we see fit." "No, Senator," said I, "you can not." The Supreme Court of the United States has declared in the most positive terms that the legislature may either directly or through a commission control the rates, with this limitation, that it must allow to the railway company a reasonable compensation for the service performed, and unless it does that the rate established is an illegal rate.

Take the Northern Securities Company once more. Saying nothing about the appreciation of values, Mr. Hill has added to the capitalization of those companies \$150,000,000, and that stock has gone onto the market. If I am called upon to fix a rate over those roads I must take that into account. You have bought that stock and you have paid \$100 a share for it. It would be in my opinion, illegal and, whether it is illegal or not, it would be an act of the rankest injustice if I fix a rate on that system which deprived you, an innocent purchaser, of your property.

You have got to deal with this question finally, and you ought to deal with this question immediately.

Now, I will not undertake any further than I have in answer to your questions to discuss the details of this bill or the method of getting at this thing. I would be glad to answer any further questions that I can in reference to matters about which I have testified, and I certainly want to renew the assurance which I gave before that I have

myself no feeling that the Commission has not been treated with proper respect. A man who has served for five years on the Interstate Commerce Commission gets that idea pretty thoroughly knocked out of him, if he does not entirely. And I wish to assure the chairman and the members of the committee that I have no such feeling and did not intend to convey any such feeling.

Mr. ADAMSON. You think the Corliss bill meets your view and would be satisfactory?

Mr. PROUTY. No; the Corliss bill does not meet my views. I do not think it is the best way to deal with it; but perhaps it is the best way and only way we can deal with it now. I think the only proper way and only possible way to deal with it is to create a special court which shall revise and enforce the orders of some commission. The Interstate Commerce Commission to-day is a political body in a sense; it is a partisan body in a sense. I do not think its orders ought to be put into effect unless the railroad company has some protection in the way of review, and looking at this thing practically you have to create a court which becomes an expert court. They have been through this thing in England. In 1850, or somewhere along there, it was proposed to devise some scheme for the regulation of their railways, and the House of Commons inquired of the superior judges at that time whether, in their judgment, the courts were competent to undertake that work. As I remember, Lord Campbell was lord chancellor, and he stated that of his associates but one, thought the court, was competent to do that work. Nevertheless, Parliament did delegate that power to the court, and from that time to 1875 it was discharged by the court.

Mr. ADAMSON. Have you not in mind any constitutional scheme by which you could utilize any existing court to give prompt effect to this?

Mr. PROUTY. It does not make any difference how you create that court; you may do it by creating a court from judges already on the bench.

Mr. STEWART. You said the court acted in that way in England until 1875?

Mr. PROUTY. They pursued that course until 1875 in England; then they created a railroad commission. It is made up of two persons who are supposed to be experts. One is a business man and one is a railroad man. There is also delegated to serve on that commission one judge of the higher courts, and the three constitute the commission. The findings of fact of that commission are conclusive; they can not be reviewed in the courts or anywhere else; but the findings of law can be reviewed by appeal in the higher courts. That is the commission to-day which England employs.

Mr. STEWART. You said also that the rates in England are higher than in any other country of the civilized world.

Mr. PROUTY. They are, I think. In England the commission does not make maximum rates; it declares some through rates, but the maximum rates are made by direct act of Parliament. The board of trade, which corresponds somewhat to the Interstate Commerce Commission here, considers this question and reports to Parliament a schedule of rates for a particular railroad which are deemed to be fair and just, and Parliament enacts them into a law, and those rates are the maximum rates which the railroads can charge.

Mr. STEWART. Then the English railroads commission has only jurisdiction over secret rates or rebates?

Mr. PROUTY. The English law is the foundation of our law. It provides that there shall be no discrimination between shippers and no discrimination between places, and it also provides that where railroads refuse or neglect to make proper through rates the commission shall have power to deal with that question. Those are the questions, as I understand it, which are principally dealt with by the English commission.

The CHAIRMAN. I would like to ask you in regard to a matter which you have only incidentally referred to. I wish you would give us your views with reference to the matter of classifications. There are, I think, three classifications now?

Mr. PROUTY. Three principal classifications.

The CHAIRMAN. What objection is there to a uniform classification throughout the entire territory of the United States?

Mr. PROUTY. To my mind there is no objection.

The CHAIRMAN. What is the objection that is urged?

Mr. PROUTY. The objection urged by the railroads is that conditions differ in different parts of the United States and that a fair classification in California might not be a fair classification in Vermont. That is what the objection comes to. But in answer to that you may say that the Western classification obtains in California, and the Western classification also obtains from Chicago west to the Mississippi River.

This matter of classification has been pretty well gone into and pretty well thrashed out several times. The railroads came very near agreeing once on a uniform classification, and while I do not know it from personal knowledge, it is said that such a classification would have been adopted but for the persistent objection of one single line of railroad. Of course if one railroad stood out it naturally overturned the scheme.

The CHAIRMAN. Would it be wise to invest the Commission, in your judgment, with power over classification?

Mr. PROUTY. The Commission must necessarily have a certain power over classification if it has the power over the rate, because the rate can be advanced or diminished by simple changes in classification. On the 1st day of January, 1900, the railroads in official classification territory advanced the rates on 800 and some different articles by a simple change in classification.

The CHAIRMAN. As this bill is interpreted by certain gentlemen who have discussed the subject here, the rate that would be authorized under the provisions of this bill to be established by a commission would at once become operative without any power on the part of the courts, except where it was manifestly unjust, to interrupt it or to suspend it during further legal procedure. What is your view in regard to that matter?

Mr. PROUTY. Well, Mr. Chairman, I am inclined to think that the language incorporated in this bill was originally sent to Congress by the Commission, and that it was originally suggested by me; but I am bound to say that a consideration of the subject before and since has convinced me that the only workable thing to do is to permit the court, in its discretion, to suspend or enforce the order of the Commission. I think that in a great majority of the cases, if any reasonable

expedition could be secured in dealing with the orders of the Commission, they ought perhaps not to go into effect until they had been passed upon by the court.

The CHAIRMAN. Suppose, in lieu of that provision which makes them at once operative, there was a provision in the law requiring the utmost practical expedition in the disposal of the cases.

Mr. PROUTY. There is that provision now, and I have known something about the operation of the provision, and it has taken on an average four years to obtain a final decision in one of our cases. These cases of ours, while they are law questions, are properly traffic questions. The courts do not like to bother with them. They will not deal with them unless they are obliged to, and every sort of obstacle seems to be interposed to prevent a speedy hearing of the cases. I think if you could create a special court which dealt with these questions alone, which was chargeable in the public mind with the proper disposition of these questions, and which would speedily become an expert body, you would solve that difficulty, and I think you would meet the objection urged by the railroads, which I am perfectly frank to confess is to my mind of great force—that the orders of a body partly political and to an extent partisan ought not to go into effect, under any circumstances, until there has been an opportunity offered for their review.

The CHAIRMAN. Suppose you had a tribunal, say, detailed—made by the Supreme Court—of one member from each circuit in the United States, to serve as this tribunal; what portion of its time would probably be occupied in the disposition of transportation business?

Mr. PROUTY. I think that a court of that kind would be invested in addition with some duties besides simply enforcing the orders of the Commission. In enforcing those orders it ought to have charge of injunctions like those that are pending in the West, and I think it should have charge of Federal receiverships of railroads. I should imagine that finally the greater part of the time of such a court would be occupied in hearing and disposing of these cases. But that might not be true. It would depend on how many appeals were taken by the railroads and how many complaints were made.

There is one thing more I want to say. It is said that there is no complaint to-day of too high a rate. I had that looked up the other day, and in the last three years there had been filed with the Interstate Commerce Commission 807 complaints against advances in rates or against rates which are alleged to be too high. Although the Commission has no power to grant any relief there are pending before it now for investigation that number of cases. All it can do is to investigate and recommend.

There are pending before it for investigation cases which involve to the shippers and the railroads millions of dollars annually.

Mr. MANN. You have the power to declare that the rate is unreasonably high?

Mr. PROUTY. What good does that do?

Mr. MANN. You have the power. How many times have you exercised it in reference to these 800 complaints?

Mr. PROUTY. Those 800 complaints have not been brought before us in a way that that question could be raised.

Mr. MANN. How could it be raised if not in that way?

Mr. PROUTY. The 800 complaints have been informal complaints.

They have asked the Interstate Commerce Commission what could be done, and the reply has been that the Commission can investigate, and would be glad to investigate, at the expense of the Government, any questions of that sort that the complainants desired, and would make what order it could; but that there is no way at the present time in which that order can be enforced. The almost invariable reply is—and I have received in the last few days and have now on my desk some of those letters—that unless we can do something for them and are certain of it that they do not want the railroad to know that they have complained.

Mr. MANN. You say that you have notified them that you can not enforce that order?

Mr. PROUTY. We do.

Mr. MANN. Can not you enforce an order that a rate is unreasonably high?

Mr. PROUTY. I do not understand we can. We have never been able to do so.

Mr. MANN. The law does not provide any method by which you can put in force an order saying that a rate is unreasonably high?

Mr. PROUTY. I do not so understand it. We are at the present time attempting to enforce in one or two cases that kind of an order.

Mr. MANN. You have attempted to enforce it in cases where the Supreme Court held that you went beyond your jurisdiction?

Mr. PROUTY. The Supreme Court held that we had no power to determine what rate should be charged for the future.

Mr. MANN. But it said you could say a rate was unreasonable.

Mr. PROUTY. No; you are mistaken.

Mr. MANN. That is my interpretation.

Mr. PROUTY. No; you are mistaken; you must be misinformed.

Mr. MANN. I have read it.

Mr. PROUTY. You do not read it right, then.

Mr. MANN. That may be.

Mr. PROUTY. Only the other day in an article before the Interstate Commerce Commission as good a lawyer as Mr. Machen, of Cincinnati, took the ground, not that the Supreme Court had not decided it, but that the Commission had no such power. We have decided in one or two cases we would exercise that power and find it out.

Mr. MANN. You say the Supreme Court has never decided that under the law you can declare that the rate is unreasonably high?

Mr. PROUTY. It had decided this: That a man can bring a complaint before the Commission, alleging that he has been charged an unreasonable rate, and that the Commission may award him damages. In determining whether or not he is entitled to damages we must decide whether or not the rate is unreasonably high, and of course I think they have said—although that is denied—that we have that power; but they have declared that we have no power to pass upon a rate for the future—as to its reasonableness, one way or the other. We can declare its reasonableness to-day; we can not declare whether it is a reasonable rate to-morrow.

Mr. MANN. That is another proposition. Then they have to make a change. But I understand you to say that the court has not decided that you can declare a rate unreasonable?

Mr. PROUTY. In the way I have indicated.

Mr. MANN. As I have read the law it plainly gives you the power

to declare a rate unreasonable, and criticism has been made upon the Commission that it does not attempt to exercise that power.

Mr. PROUTY. What we have advised complainants is this, although we do not really think it is so: That we had the power to investigate their case and make a report stating, in our opinion, whether or not the rate was reasonable, and if found unreasonable stating what rate ought to be charged for the future. We had power to order the carrier to cease and desist from the present rate. Now, we have advised complainants that we could do that, and I want to say that in every case—

Mr. MANN. On what ground; on the ground that it is unreasonable?

Mr. PROUTY. Yes, sir.

Mr. MANN. You just declared that you did not have that power.

Mr. PROUTY. No; I declared that the Supreme Court had never said we had it.

Mr. MANN. And you declared that the law did not confer it upon you.

Mr. PROUTY. No; I did not intend to say that. I was speaking of the Supreme Court. The Commission has held that power, because there is no other way in which the case can be settled. But if that is decided in favor of the Commission it amounts to nothing.

Mr. STEWART. Have you awarded damages?

Mr. PROUTY. Yes; we have awarded damages. We sent out a couple of opinions to-day in which we awarded damages for failure to furnish cars, but the entire amount of damages awarded since the Commission has become a Commission is utterly insignificant. I do not remember how much it is.

Mr. MANN. That is just it. Why, if the railroad rates have been so unreasonably high, have not the awards been high? There has been a chance to act under the law.

Mr. PROUTY. Because the complainant does not usually care much about his damages in the past. He very often makes no claim for damages in the past, and because in a great many instances where we hold the rate too high we do not feel we ought to go back and compel a railroad to refund. Take a case that came up from Iowa, in which I wrote the opinion. The complaint was as to the charge on grain from the vicinity of Sioux City. The rate was about 19 cents to 20 cents a hundred.

The carriers that carried that had been carrying grain last year from Kansas City for 7 cents; the carriers who have carried that grain have carried grain from Buffalo to New York for 5 cents. They have been carrying grain from Chicago to New York for 11 cents. We held that this Iowa rate was too high, and that it ought to be reduced from 1 to 3 cents a hundred pounds. It never has been reduced. In fact in that case there was a claim for reparation, but we said we can hardly award reparation in this case. These carriers we think have acted in good faith. While we think the rates ought to be otherwise for the future—there have been pretty hard times in the past, and there are pretty good times now—we do not hardly feel we ought to award damages for the past. I do not think the Commission should have any power to award damages.

Mr. MANN. And having that power you have not chosen to exercise it?

Mr. PROUTY. We have passed on every question of that kind where the complainant has asked for damages.

Take another case. Take the case of the city of Danville, which is 66 miles south of Lynchburg. The Southern Railroad serves both those places. Danville claims it is discriminated against. We held that there was discrimination, and that the rates from Danville ought to be reduced; but what damages could we allow? You can not award damages to the city of Danville, in that instance; that does not amount to anything. They say their industries have been driven away. The complaints we deal with are not from individuals; they are from localities. They are from State railroad commissions sometimes, and sometimes from boards of trade. This complaint in Iowa was by the Northwestern Grain Shippers' Association.

Mr. MANN. It seems evident, then, that where the law gives authority to the individual shipper to discriminate against or pay too high a rate to come before you that they do not choose to avail themselves of that opportunity at all.

Mr. PROUTY. Not ordinarily, Mr. Mann. They ordinarily say this, that unless we can get some speedy and immediate relief do not say anything to the railroad about it.

Mr. MANN. They could get speedy and immediate relief individually, so far as you are concerned, in the way of damages?

Mr. PROUTY. Damages do not amount to anything.

Mr. MANN. You sue a street-railway company for charging 10 cents fare, and if the court holds they have to refund the 5 cents it will stop it.

Mr. PROUTY. If you are a philanthropist enough to carry it to the Supreme Court for the benefit of your fellow-men, all right.

Mr. MANN. We are philanthropists enough to provide a Commission to carry it there; that is the point.

Mr. PROUTY. Then provide the Commission with some authority to do it. I want to say this, that this Commission has said uniformly to complainants within the last three years, I think, if you want your complaints investigated and steps taken that can be taken to give relief it shall be done, and all we ask you to do is to sign a complaint. That has been the rule of the Commission.

I am sorry, gentlemen, that I have been obliged to weary you with such lengthy remarks.

The CHAIRMAN. You have not wearied us and we have been very glad indeed to hear you.

(Adjourned.)

AFTERNOON SESSION, *April 22, 1902.*

**STATEMENT OF HON. JOSEPH W. FIFER, A COMMISSIONER OF
THE UNITED STATES INTERSTATE COMMERCE COMMISSION.**

Mr. FIFER. Mr. Chairman and gentlemen of the committee, the very full and complete discussion of this question made by my colleagues makes it unnecessary for me to detain the committee very long. Now, we have heard from Judge Prouty in regard to the great combinations that have taken place in this country in railroads and the combinations that are now going on. I think all men of reflection will agree that that practically obliterates railroad competition on which

the people could rely in the past for a reasonable rate and that another remedy must be pursued, and that is the remedy of control.

Gentlemen, railroads are not engaged in business for their health. They have money invested in those properties in order to make a profit, and the fruitage of railroading is the price that they get for the carriage of persons and property. When that is understood you can very well understand the further fact why it is that railroads refuse to yield the smallest fraction of their right to fix the rate and to control it, as far as they may, after it is fixed.

Now, it is easy enough to say that the railroads must be controlled. It is quite a different question to say how they shall be controlled. When you touch the right of railroads to fix their rates or to control their rates, you touch the tenderest nerve in their whole anatomy. They will yield that right very reluctantly.

The question is for this committee and for Congress to say whether there shall be control. If railroads are to fix their rates in the first instance and then make changes at their pleasure—if that is the decision of the committee and of Congress—that is the end of the controversy. But if you say there shall be control, then who shall do the controlling? Who are you going to make the depository of the power to control railroads? It must be done by some human agency. Who shall be that agency and how shall it be done? is the question, it seems to me, for the decision of the committee; and when you approach that question you have your knife on the nerve of the whole situation, because railroads have no other means of bringing money into their treasuries except the price they get for carrying persons and property.

Now, I think everybody will agree, outside of a few railroad men, that there must be this control; that it will not do to constitute the railroads the judges in their own case; and this is conceded by some railroad men, that as long as human nature remains in its present imperfect moral condition, if they are to exercise that power that power will be abused, and I do not say that in order to disparage railroad men, for I think, on the average, they are just as good and as honest as other people.

It has been frequently said in some newspapers and periodicals, and by people in conversation, that the Commission desires to fix these rates in the first instance, in order to get great power in their own hands and to make big men of themselves. Now, gentlemen, that is a mistake.

The Commission has at no time asked that power to be conferred upon them. They do not believe that it is proper or expedient; but they do believe that the Interstate Commerce Commission or some other body ought to exercise the power to regulate and adjust rates after they are made. The question is, shall it be the Commission or shall it be the courts? Somebody, in the end, must decide these questions.

We have said that the railroads ought to fix these rates in the first instance. There are 200,000 miles of railroads in the United States, speaking in round numbers. It would be impractical and inexpedient for a commission of five persons to fix those rates in the first instance. But we do say that some body—the Commission or some other body—should have the right of control and supervision over those rates, and when you approach that question you are confronted with a very difficult problem, I am willing to admit.

A question comes before the Commission in regard to an excessive rate. Great injustice may have been done, and the Commission so find. Under the present law the railroad company can take an appeal to the courts, and on the statement of Judge Prouty on an average it takes four years to secure a final decision by the courts. In the meantime the evil is continued. That, gentlemen, is one of the difficulties. The question is as to whether the order of the Commission shall go in force at once or whether the railroads shall be permitted to open up the whole question by going into the courts and taking an appeal.

Now, the Corliss bill provides that even when the Commission makes that order that it shall not continue to exceed two years. Why is that? Conditions may change. Competition grows up. The necessity of the rate may not exist two years from now that prevails at this time. It may be that a languishing industry needs to be fostered and sustained.

And so the bill proceeds upon the theory that conditions may change. Conditions will also change when an appeal is taken, and a final decision is not had within less than four years; and so the litigant comes out of his law suit about as empty-handed as he went in.

Now, gentlemen, some provision ought to be made by Congress for a speedy hearing upon the decisions of the Commission. There is one of the great troubles. It discourages men from coming before the Commission and incurring expense in these hearings, when the case, if they get a decision in their favor, will go into the courts and remain buried there, as it has been, in some instances, I believe, for a period of six years; and when it comes out there must be a reexamination of the whole question over again to see whether conditions have changed, and there is a necessity of making a change in the rate as originally decided by the Commission.

Mr. MANN. Will you let me ask you a practical question there?

Mr. FIFER. Certainly, any question.

Mr. MANN. Suppose a case where the Interstate Commerce Commission should fix a rate, which in the end should be found to be too low; that order is appealed from in the way prescribed by the statute, but is not stayed by the court. The order, therefore, goes into effect before the matter could be passed upon by the courts in the ordinary course of time, and the two years may have expired, and thereupon, if the railroad under this bill changes its schedule of rates, the Commission, without a new hearing at all, can put another order into effect, ordering the rates back into existence at once, without hearing. How would that—

Mr. FIFER. Now, Mr. Mann, that is one of the difficulties in this situation. I think the lawyers will agree that the common law says that the common carrier shall not charge more than a reasonable rate for the carriage of persons and freight. Nobody will dispute now but what there have been excessive charges. Persons who travel and persons who ship freight have been injured, and yet in the whole United States there has not been a single case decided by a court of final jurisdiction awarding \$1 or 1 cent of damages.

Now, the courts, by reason of the progress and inventions that we are constantly making, are constantly fighting on the skirmish line, trying always to extend the provisions of the common law to meet the changed condition of affairs; but when they got down to this question of railroad traffic, it seemed necessary to supplement the common law

by an enactment of Congress, and that gave us the present interstate-commerce act.

Now, it is said if the Commission decides that a rate is unreasonably high in itself, and it is buried in the courts for years, that these shippers have a remedy to recover from the railroad the amounts of their damage, provided the finding of the Commission is sustained by the court.

Gentlemen, that is simply remanding the people back to the rights already granted them by the common law. They have that right already. But when a man is injured to the extent of \$100 or \$500, or it may be only \$25, he can not afford to, and he never will, sue a railroad company to recover his damages.

When a complaint is made before the Commission and a man has the courage to make that complaint, it is not only on his own behalf, but if he wins out and gets a decision in his favor by the Commission, and finally by the courts, that is a benefit to the whole community, because these rates are to be general and universal; and that was one object in the passage of this act, to afford a remedy that the common law, however much the courts might try to expand its provisions and apply it to the new conditions, did not give.

Now, there is a great difficulty just at that point. The Commission decides that a rate is excessive in itself.

If that is to be binding on the railroads, and take effect at once or within a few days, giving them a reasonable time to comply with the order of the Commission, then it is said on the part of the railroads, if the order of the Commission is finally reversed by the courts, that they have paid out money that they should not have been required to pay, or carried this freight at a less rate than they were entitled to have.

On the other hand, if the case, after it is decided in favor of the shippers by the Commission, can be buried in the courts, then the shippers, the whole community, possibly half a State, must suffer, and they come out of the litigation and the controversy just as empty handed as they go in, after the lapse of four years, and after they have incurred expense and the expenditure of much time.

Mr. STEWART. Judge Prouty has said very well that these corporations are public servants.

Mr. FIFER. Yes, sir.

Mr. STEWART. Their status is established by State and Federal legislation, and the tariff charges are a tax upon all species of property in the United States.

Mr. FIFER. Yes, sir.

Mr. STEWART. Why should they fix these taxes, they being public servants? If you are a member of a municipality and own a residence there, a house, you do not fix your taxes?

Mr. FIFER. But he did not mean it as a tax in the ordinary sense.

Mr. STEWART. You have said that the railroad companies ought not to be judges in their own cases?

Mr. FIFER. Yes, sir.

Mr. STEWART. Now, why should they, being public servants, their very life being due to their taking a tax from all property of the United States—why should they have the establishing of that tax in the first instance?

Mr. FIFER. That is a question for this committee and Congress to determine. The courts have already decided that the original power

of controlling the railroads resides in the Congress of the United States, and I take it that Congress can pass an arbitrary law that shall be reasonable and shall not be confiscatory and fix these rates primarily and originally. I do not know why that could not be done. The courts have said further that Congress has the power to delegate this power to the Interstate Commerce Commission.

Mr. STEWART. Yes; but since the combination that Judge Prouty spoke of in the Northwest, what would have been confiscatory before that combination would not be confiscatory now on account of the great increase in the capital stock, and so on?

Mr. FIFER. That is a question of fact and not a question of law, and must be decided after a thorough investigation.

Mr. STEWART. Is it not thoroughly apparent what would not be confiscatory now would have been before the combination?

Mr. FIFER. I think that is so. Of course, a railroad passing through a sparsely settled country where the freights are very high—these railroads must live, they can not run at a loss, and rates will differ in different communities, owing to the cost of carriage; as in the Rocky Mountains, over those great mountains and through the tunnels, and where the snow interferes, and where fuel is dear and water is scarce, it all comes into the question of the rates that the railroad is entitled to have for its services.

Mr. STEWART. Is not this tremendous increase of capital stock since the combination speculative and sentimental rather than real?

Mr. FIFER. Well, of course, different men will have different opinions in regard to that. That is a question of fact which it seems to me does not properly belong to the consideration of this case, and yet I might say that my own views are that the stocks are very largely inflated.

It seems to me that this is one of the vital questions that will confront this Commission and confront Congress if you decide that there must be control, and that is, What kind of control. How are you going to apply the remedy? You say that the Commission shall have the right to decide these questions.

Well, when they decide, their decision practically amounts to nothing if it can be set aside by an appeal. I have heard it suggested that a good remedy would be that when the Commission decides that a rate is too high, or that it discriminates in favor of one community against another, the railroad company should have the right to an appeal, and that that appeal should suspend the order of the Commission until it is finally decided by the courts; but that in the meantime the railroad should keep a strict account of all freights that are shipped from the point where the complaint originates, and if the decision of the Commission is sustained, then they should make restitution to the parties from whom they have collected freight. Some means, gentlemen—if these railroads are to be controlled in regard to these rates—some means should be adopted whereby a speedy hearing shall be had by some court or some tribunal of final jurisdiction in the case.

For myself, I think that a court with all the powers of a court, appointed by the President under some act of Congress, would be a proper tribunal, and they should be men of experience in regard to the transportation problem. Now, it is no disparagement to the profession, the legal profession, for me to say that a lawyer in ordinary practice does not understand thoroughly this transportation problem;

that the Federal courts of the country do not like this kind of litigation. There ought to be men of experience, men trained in these questions, possibly a court of three, whose sole business should be to pass upon these matters; one of them, at least, should be a good lawyer, and perhaps two business men; any way to create a competent tribunal, to pass speedily and intelligently upon the decisions of the Commission after they have been made. There is the crying evil.

Mr. MANN. Do you think that a court sitting at Chicago all the time, limited to that kind of inquiry, could transact all the business that would be brought before it at that one point?

Mr. FIFER. Well, I have not thought into the question closely enough to know. Possibly there might be different courts, something after the fashion of our appellate courts in our own State. Possibly a court of three, sitting at Washington, would be sufficient to pass upon those questions. After they become familiar with the transportation problem they can dispatch their business very rapidly.

In our own State we have a court of claims originally composed of three members of our supreme court. There are seven members in all, and the court was to designate three members to act as a court of claims.

That has all been changed. Experience has shown that it is wiser to have the governor appoint a court of three members, constituting a court of claims. We have a Court of Claims here in Washington under the acts of Congress. Something of that kind should be created here, so that these decisions of the Commission can be speedily and intelligently passed upon.

Mr. MANN. Is it not a matter of practical experience, and can you remember any exceptions, that when a court of any kind, of claims or otherwise, is constituted to pass upon a particular class of cases, that it gets away behind in its calendar by practically encouraging the bringing of litigation of that sort? Can you name an exception to that proposition?

Mr. FIFER. You say where a court is constituted to pass upon a certain class of business—

Mr. MANN. Yes, sir. Can you name an instance where such a court is not behind in its calendar?

Mr. FIFER. I would say that I can not speak intelligently on that question. About the only experience I have is in regard to the court of claims of our State, and I think they keep right up with the docket all the time. I think a case that is brought there and submitted for trial, according to my recollection, is decided within a very few months. There is no court in the State of Illinois where the docket is so little clogged to-day and burdened with cases as our court of claims.

Mr. MANN. It may be true, but I can not imagine it.

Mr. FIFER. Now, I am not speaking in regard to the National Court of Claims. I believe they are somewhat behind, but it is not strange that they are.

Mr. STEWART. Your Commission is not behind?

Mr. FIFER. Sir?

Mr. STEWART. Your Commission has kept up with its business?

Mr. FIFER. Yes, sir; fairly. We have had a good deal of running around to do, you know—

Mr. MANN. You do not have the business that you would have under this bill, and you are still pretty busy?

Mr. FIFER. Yes, sir; we would have to take the evidence. But an appellate court that would pass upon the evidence simply after it is collected and the whole thing is crystalized and put into a nut shell by a previous decision, their minds come at once to the point——

Mr. MANN. Your idea is to have one appellate court to pass upon the orders issued by the Commission?

Mr. FIFER. Well, I do not know; but I think that would afford a remedy.

Mr. MANN. Or——

Mr. FIFER. You must reach a final jurisdiction at some time and in some place.

Mr. MANN. Do you think we could limit that so that you could confiscate railroad property without going to the Supreme Court of the United States and having them pass upon it?

Mr. FIFER. Possibly you might allow an appeal to the Supreme Court of the United States; but surely it would not be a very great hardship or anything unreasonable to say in regard to railroads that after they have had a hearing before the Interstate Commerce Commission, and that a court has reviewed the decision of the Commission, that the decision should stand until it should be heard in a higher court.

Mr. MANN. I was not referring to that. I was referring to the expediency and the practicability of expediting matters in passing them through this court of three members for the whole United States; whether that could be done without getting behind with the calendar.

Mr. FIFER. Those things can only be determined after a long experience.

Mr. STEWART. Do you not believe, from your experience on your Commission, that if your Commission was vested with the power you speak of you could keep abreast of the business? Suppose you were invested with the power of this tribunal——

Mr. FIFER. The final tribunal?

Mr. STEWART. Yes, sir.

Mr. FIFER. And let the decision of the Commission be final?

Mr. STEWART. Yes, sir.

Mr. FIFER. I do not know that that would involve any more work and labor than we are doing now.

Mr. MANN. It would involve a great many more cases than now?

Mr. FIFER. I could not say as to that. Possibly if we had that power it might encourage litigation.

Mr. STEWART. If you established a precedent, would it not lessen litigation?

Mr. FIFER. Yes, sir; cases would be settled, and railroads and shippers and everybody else would comply.

Mr. STEWART. Would be guided by the precedent?

Mr. FIFER. Yes, sir; by the precedent.

Mr. STEWART. Your decisions would be published just the same as the decisions of the courts?

Mr. FIFER. Yes; they are now.

Mr. MANN. How long do you think it would take your Commission to say what should be the rate from Chicago to New York and from Kansas City or Louisville or Minneapolis to New York, not to mention Baltimore and Norfolk and Boston?

Mr. FIFER. That is a very wide question.

Mr. MANN. That is what I thought.

Mr. FIFER. It is an open door, that leads into a very wide field.

We have a case now before the Commission of the middle West shippers against the transcontinental line and the shippers of the Pacific coast. It grew out of a differential between a car and a carload rate. The wholesale jobbers of the middle West complained that that differential was too high, and that it shut them out of the jobbing business on the Pacific coast. They sold to the man who retails, and therefore were compelled to ship in less than a carload rate, and that is higher than a carload, whereas the Pacific-coast jobber ships always in a carload, and puts it right in his storehouse and redistributes it from there.

Now, in that case there was that complaint, and we allowed the lawyers and the litigants to take their own time, and I think we were over one year in taking the testimony before it was finally argued and submitted to the Commission.

Mr. MANN. Can you give me any idea—I do not know anything about it, and you are on the Commission—as to how long it will take to pass upon a question like that?

Mr. FIFER. I just cited that instance to show you. Sometimes we can determine those questions in less time than we suppose we can when we enter upon an investigation. I could not say, Mr. Mann.

Mr. MANN. Of course I do not mean to give the number of days or weeks or months, but whether it would be an easy matter or not.

Mr. FIFER. You would have to go to the different localities. The law under which we are now acting authorizes the Commission to go to different localities, and that is done for the purpose of affording litigants an opportunity to be heard without incurring a great expense.

We go to Chicago and San Francisco and Boston and New York and all around, because if there is a complaint on the part of merchants in any of these localities it would be impossible, and a very great hardship upon them, for them to come to Washington with a great cloud of witnesses, incurring a great loss of time and great expense, and it would be a practical denial of justice; so the law has wisely provided that the Commission, or any member of it—one—can go out and take this testimony in different localities.

Much would depend on how much traveling we would have to do and the number of witnesses we would have to examine. You are a practical man and a lawyer; you ought to be able to give as good an opinion on that as I could.

Mr. MANN. My information is that under this law you would be fifteen years behind your docket inside of three years.

Mr. FIFER. Oh no, my brother; Judge Prouty here suggests that for the first ten years—no, not that long—the first six years, I think, of the existence of this Commission, it was supposed that really they did have this power, and they exercised this power, and the railroads and the litigants submitted to the power, and finally the railroads raised an objection—

Mr. MANN. They never claimed to have any such power as is referred to in this bill.

Mr. FIFER. (continuing). And the court overruled the objection.

Now, the courts have said that when we investigate the case all the power delegated to the Commission by the law is to enter an order that the offending company shall cease and desist from charging the illegal rate, and there we must stop. Anything beyond that is unwarranted,

and is illegal and void. In two cases I believe the courts have so decided. I think, and I believe it is the opinion of my colleagues, that when a complaint is made and the Commission has taken testimony bearing upon the issues made, the arguments have been had, and the Commission is fully advised, that they should have the right not only to say that the offending company shall cease and desist, but to indicate what would be a reasonable rate, because the very mental operation of determining that a rate is too high, and that the company must cease and desist therefrom, involves a knowledge of about what it ought to be.

Now, if we enter an order that they shall cease and desist from charging what we have determined to be an illegal rate, and go further and indicate or fix what shall be a legal rate, that part of the finding is illegal.

One more word and I am through. This law has its civil and its criminal aspects, and it seems to me that if the committee will keep separate those different provisions they will be enabled to deal with this question more intelligently. There are certain cases which are declared criminal by the act. What are they? It is not every act. When a rate has been fixed and published, as required by law, and a secret rebate, or any trick, subterfuge, or device is adopted whereby the rate shall be deviated from, that is made a criminal offense.

There should be no mistake, if a railroad fixes a rate and advertises it and sticks it up in the station house, and then that railroad departs from that rate, there can be no question that they did so with their eyes open, and the act is made criminal. It is made criminal to underbill; false billing and false weighing are made criminal. And both parties—both the shipper and the railroad—are amenable to a criminal indictment for that practice.

All this freight is classified, classes 1, 2, 3, 4, 5, and 6, as the case may be. No one takes a higher rate. They may describe the property as property that properly belongs to the fifth or sixth class, the lower class, whereas it properly belongs to class 1 or class 2.

They may give a false weight, and thereby defeat the objects of the law. The railroad and the shipper may combine upon those questions, and by some trick or subterfuge they can place it in a false class, or they may falsely weigh it, and place it in a wrong class.

Things of that kind are done purposely, and they are done knowingly, and the law visits upon that offense a criminal penalty. But there are a large class of cases that are not made criminal. Take the question as to what the rates should be from New York to Chicago or from Chicago to the Pacific coast, what human sagacity can determine to the cent what the railroad is entitled to. Somebody must determine the differential to be charged between a carload and less than a carload, between the points that I have named.

What human wisdom can say to the cent what shall be charged? Those are questions about which honest men may honestly differ, and they never can be made to agree exactly.

The long and short haul provision, the fourth section, says that you shall not charge more for a short haul than for a long haul over the same road, the shorter being included in the greater, when the circumstances and conditions are substantially the same. Well, who is to determine, now, when the circumstances and conditions are substantially the same? Those are questions that do not involve any crim-

inality. You take the question of shipments from the Mississippi River east and to the Pacific coast, and it costs more from New York to Phoenix, Ariz., than from New York to Los Angeles; and why?

That is the shorter haul included in the greater, but the circumstances and conditions are not substantially the same; and why? Water transportation comes in.

Commercially speaking, New York is nearer to San Francisco than is Chicago, but there is a great deal of freight, more formerly, perhaps, than now, that used to go, and some goes to-day, from St. Louis and Chicago to the Atlantic coast, and then goes around the Horn and the Isthmus of Panama and reaches the Pacific coast. Now, the railroads say that that is not a case of substantially the same circumstances and conditions, and that the railroads at the Pacific coast terminals have the right under the law to meet the water competition at those points.

Those questions can never be made criminal. They are questions upon which persons may honestly disagree; and when a complaint of that kind is brought before the Commission, it is decided that there is no criminality. And, gentlemen, this constitutes, in my judgment, possibly the most important part of this law.

Now, how are you going to prevent, how are you going to stop, these violations of the act which are made criminal? You have been told by my colleagues that there is no penalty denounced against the carrier by the law, and that is true. Gentlemen, these violations are what the law calls *malum prohibita*, and I care not what certain individuals may think of it, mankind generally hold that the same moral turpitude does not attach to an act of that kind as does to a crime, which is *malum in se*, such as burglary and larceny, crimes in the absence of all law.

And you can see, bearing that in mind, what a great difficulty confronts the Commission when it undertakes to enforce the criminal features of the act. Many statutory prohibitions, acts that are made misdemeanors by a statute, a short time ago were no offenses at all. Yesterday the act violated no law; to-day it is made a penal offense, and the offender is subject to a heavy fine, and a term in the penitentiary.

Now, it is my experience that railroads—and I have no quarrel with them at all—have influence; they have always managed to take care of themselves pretty well, and when a rate has been violated, and somebody has subjected himself to the criminal part of this act, and you undertake to secure an indictment and conviction, you have got a great big job on your hands.

These men have friends; they have standing in the community. The whole community may know that they have at different times violated the law, but they have just as many friends as they had before. They are not ostracised in society; and you undertake to convict one of them and you meet great difficulties. Now, what should be done? Judge Knapp has told you, and in that I agree with him, that the corporation itself should be made subject to indictment, and upon conviction it should be punished; of course, it can not be imprisoned; it loses no cast in society, and every person who is cognizant of the facts can be compelled to testify and there is no immunity; and you know, as practical men, under those circumstances you can get testimony and you can get conviction, and if the penalty is large enough, fixed

by the law, it will be just as much of a deterrent as the other, and the testimony will be easily acquired.

I have been on the Commission for a little over two years; I have heard many railroad men testify, and I do not recollect that in any instance we ever secured testimony that would justify an indictment until the hearing in Chicago last January. We have probed that question, at least in some cases. In this very case we went, in the first instance, to Kansas City. We got nothing. We followed it up and went to Chicago, and a clean breast was made of the whole thing. They testified that there was a secret cut, and I think some of them, at least, testified that only one man would know of it; in most instances papers were destroyed bearing the evidences of the violation; no books were kept. How are you going to dig out and get hold of any particular individual? And when you get him you put him on the stand and he has immunity from punishment. How are you going to deal with that?

Mr. STEWART. Adultery and gambling are not malum in se—

Mr. FIFER. No, sir.

Mr. STEWART. But malum prohibita. Do you not think that in the form of malum prohibita these railroad corporations commit greater offenses than highway robbery, which, you say, is malum in se?

Mr. FIFER. I do not know about that.

There is another feature of the Corliss bill, as to whether the word "knowingly" or "willfully" should be inserted. Now, of course, we have cases all the time where there are honest mistakes made as to the rates charged, and there is no pretense that there is any criminality; no pretense whatever.

In regard to the question which you called my attention to, suppose there was a statute against a person being an inmate of a gambling house and no scienter required, but simply the broad statement that there is a penalty upon him if he is an inmate of a gambling house. Now, suppose he wanders in there through mistake. It might be close to a hotel and he might think he was going to the hotel—they are very closely connected sometimes—

Mr. STEWART. It has been decided time and time again that if a man enters a bagnio the presumption is that he goes there for the purpose of adultery.

Mr. FIFER. Yes, sir.

Mr. STEWART. And you have to destroy that presumption by testimony. Mr. Fifer, that is certainly correct.

Mr. FIFER. Take the case of a man who enters a gambling house—

Mr. STEWART. Yes; you would say that the presumption is that he is guilty. And that is the presumption in regard to the railroad company. And the railroad company ought to have to rebut that presumption.

Mr. FIFER. The onus is on that man, but the practice is always to allow him to show that he was there by mistake.

Mr. STEWART. Now, the railroad company, the onus is upon the part of the railroad company, and the presumption is that they are guilty of this offense, and the burden should be thrown upon them to show that they are innocent.

Now, if a party goes to a gambling house through mistake, knowing that it is a gambling house, he can not plead that he did not know it was an offense under the law when he entered there knowing it was a

gambling house. That would be a mistake as to law. He can not be heard to say that he did not know there was any law against it.

Mr. ADAMSON. Take the statute against selling liquor to minors.

Mr. FIFER. Yes, sir.

Mr. ADAMSON. I think the court generally holds the law to be that the onus is upon the seller to know how old the boy is.

Mr. FIFER. Yes, sir; unless there is a statement in the law that he must commit the act knowingly, and knowingly sell to minors. I am glad that you called that up.

Mr. ADAMSON. I have known many a clerk in a barroom to be convicted under that statute without knowing about the boy.

Mr. FIFER. So have I; and in my State we have a statute against the sale of liquor to a person in the habit of becoming intoxicated, or to minors.

Now, the supreme court of our State holds that the saloon keeper sells at his peril, and it makes no difference whether the minor is 7 feet tall and has the beard of a Hercules. As I say, coming back to the illustration that I have given, I do not believe that where a clerk in a railroad office in figuring up makes a mistake in his figures and sends in a bill for a carload of freight, where it is purely a mistake, I do not think there is any criminality there.

The law generally places whisky sellers on a different basis, for that business must be licensed in the first place, and the law distinguishes it from all other business in that way.

Mr. STEWART. In Massachusetts the presumption is that every testator is insane when he makes a will, and that presumption must be rebutted by proof.

Mr. FIFER. Yes, sir.

Mr. STEWART. Don't you think that that rule should be applied to the railroad corporations, and that the rates should be presumed to be unfair, and that they must prove the fairness of the rates?

Mr. FIFER. I hardly agree with that. I think that if the rates are unfair it can be shown, that fact can be shown and some competent tribunal can correct it.

There is another provision of the criminal law that I think ought to be amended, and that is to make the departure from a published rate punishable and treated as an unjust discrimination. My friend, Mr. Mann, asked a very pertinent question yesterday in regard to these packing-house rates from the Missouri River to Chicago. There are only a few great packing houses, and I believe—and I think that is the opinion of all my colleagues—that there was no unjust discrimination in that instance. Although a departure from a published rate, and although in a sense a secret rate, all the persons or corporations who could avail themselves of that cut rate knew of it in some way. The rate on packing-house products from the Missouri River points, the published rate, was 23½ cents. They were actually carrying the goods for 18½ cents, 5 cents less. Now, the query comes up, if there was no discrimination, then who was injured? And why should that be made a penal offense?

Gentlemen, in considering that question I ask you to go back of the shipper and look to the producer. It is true that the man who raises cattle and grain on the Western farm is not financially interested in the warehouseman or the packing-house man who does the shipping, but what he is afraid of and the way in which he may be injured is this:

By the secret rate to the large shipper the smaller ones are driven out of business, and the whole thing is confined and placed into the hands of a few men. Now, that narrows the market in which the producer may sell; it lessens the number of men that will purchase his products, and they claim that it enables a few men by that means to fix the price paid the producer and to fix also, in some measure, the price at which the goods are sold to the consumer.

It was suggested by some one on yesterday, I think, that these conditions had already driven out the smaller man. Well, if the conditions have already driven out the smaller men, if they continue will it not keep them out? That is the question. I submit to the committee, is it not better that there be a published rate stuck up in the station house, so that everybody may know, and if that rate be adhered to it will widen the market of the producer, it will increase the number of men to whom he may sell. The tendency of the other policy is to narrow the market.

I have detained you longer than I had intended, gentlemen. There are other phases of this question that I would like to speak of, but these are the main features. If there are any questions that any members of the committee desire to ask, I will answer them to the best of my ability.

Mr. STEWART. You say that the consolidation in the hands of a few large dealers would narrow the sale by the producer. It would perhaps affect the price, but it would not narrow the sale. Supply and demand would control that, entirely. You said it narrowed the market; it might fix the price to the producer.

Mr. FIFER. What I meant by that was the different individuals to whom he might sell.

Mr. STEWART. But in the aggregate it would not reduce the sale?

Mr. FIFER. I suppose if one man only in Chicago could buy grain that would certainly place great powers in the hands of that individual.

Mr. STEWART. It would not narrow the sale of the producer. The supply and demand would control that.

Mr. FIFER. No, sir; he would always sell.

Mr. KNAPP. He would not get so much.

Mr. FIFER. The plea they make, and I am only making the plea that is made by the producer—

Mr. STEWART. He could not get so much for it?

Mr. FIFER. Yes, sir; he narrows, he limits, his opportunity to sell. One man does not give a good price. There is competition in the purchase of grain where everybody has a fair show and an equal chance, and one man will overbid another, and in that way the producer, it is supposed at least, secures a better price for his product.

Mr. STEWART. Then you agree with Mr. Prouty that the two remedies to be adopted are, first, to punish the corporation, to punish any departure from the published rates—

Mr. FIFER. I think that a departure from the published rate should be made a discrimination, and treated as a discrimination.

Now, in one case an indictment was secured and there was a departure from the published rate, and the evidence was positive, but the court held (the indictment charged an unjust discrimination), and the court said, "Why you have not brought in others to show here that somebody was charged a greater rate and therefore there is no discrimination." The simple act of departing from the rate was not held

to be enough. The departing from the published rate the court held was necessarily discrimination.

I feel that I ought to say, in that connection, that that offense, as I remember it, is punished by both fine and imprisonment. That is discrimination.

There is another drag-net provision in the law which does impose a fine for any violation, but that is a much less penalty.

Now, I do not know why those two provisions of the criminal law should not be amended. I do not know of anybody who would say that they should not be amended.

Mr. MANN. Will you answer me a practical question?

Mr. FIFER. Yes, sir.

Mr. MANN. This Nelson-Corliss bill provides that testimony shall be taken in the first instance before the Commission in fixing a rate, and the transcript of that testimony certified to the court, where the court is appealed to, and then if the court desires other testimony, or decides to have other testimony, that it shall be certified to the Commission, and the Commission shall take that new testimony. I understand the reasons for all that, but do you think it would be practicable or not for the Commission, as a matter of fact, to take all the testimony, in addition to deciding all the cases which would be brought before it?

Mr. FIFER. That is to provide that no further testimony shall be taken?

Mr. MANN. That law provides that if the court concludes to permit other testimony to be offered, then that fact shall be certified to the Commission, which shall take the testimony. Of course I understand the reasons for that, in order to make them make their case before the Commission; but as a practical question, the purpose of this legislation is to expedite the decision of these cases.

Mr. FIFER. Yes, sir.

Mr. MANN. Will it be practicable for the Commission, in addition to its other duties, to take all of the testimony which might be required to dispose of these cases?

Mr. KNAPP. Yes; certainly.

Mr. FIFER. I do not know, Mr. Mann, why that should not be done. It is done in all the nisi prius courts of the country. They hear the testimony—

Mr. MANN. I think in every case, in every big chancery case, the testimony is always taken before a master in chancery.

Mr. FIFER. Yes, sir.

Mr. MANN. And as I understand, you do not have that authority to have that done?

Mr. FIFER. Yes, sir; the courts, I think, in several instances have referred cases back to the Commission and directed them to take further testimony.

The CHAIRMAN. What is your practice as a commission; to take testimony as such before the Commission or before a member of the Commission?

Mr. FIFER. That has not occurred in my time. I will refer to Mr. Prouty to answer that question.

Mr. PROUTY. We can do either thing, Mr. Chairman, but as a matter of practice one or more members of the Commission take the testi-

mony in a case unless the case is of very considerable importance, in which event we usually go as a commission.

The CHAIRMAN. Do you ever depute anybody else to take testimony?

Mr. PROUTY. That can be done.

The CHAIRMAN. You have that authority?

Mr. PROUTY. Yes, sir; that is, testimony can be taken before a notary public.

Mr. FIFER. A deposition.

Mr. MANN. Have you authority to appoint a commissioner to take testimony?

Mr. PROUTY. In a foreign country, but not in this country.

Mr. FIFER. It is the same law in regard to taking depositions.

Mr. MANN. If a law like this was passed, would it not be necessary for you to have authority to appoint a commissioner to take testimony; in other words, would you not be swamped?

Mr. PROUTY. I do not think so, but that could only be tested by a practical trial. As Governor Fifer has said, this Commission for the first ten years of its existence supposed that it had and exercised every power provided in the Corliss bill. I will undertake to point out to you a case where it did exercise every power which is given in this bill, and it was not swamped with business.

Now, you were speaking of differentials. The differentials for Boston, Baltimore, New York, and Philadelphia were decided in 1875 by the Thurman committee, and that differential has remained in effect ever since. The differentials were decided a number of years ago for Chicago, and Kansas City, and Minneapolis, and they have remained in effect ever since. When one of those things is once decided, it goes on year after year, so that the business is less than might naturally be expected.

Mr. FIFER. This matter of referring cases back to the Commission occurred before I became a member, and consequently I know nothing personally about it. I knew that there were cases of that kind in the past, but the modus operandi of getting them back into the hands of the Commission I was not familiar with. Now, gentlemen, I believe I have said all that I have to say.

The CHAIRMAN. Will it suit your convenience, Judge Knapp, to go on to-morrow morning at half past 10 o'clock?

Mr. KNAPP. It will, Mr. Chairman.

The CHAIRMAN. Very well.

(Thereupon, at 3.45 p. m., the committee adjourned until Wednesday, April 23, 1902, at 10.30 o'clock a. m.)

WEDNESDAY, *April 23, 1902.*

The committee met at 10.30 o'clock a. m., Hon. James F. Stewart, acting chairman.

**STATEMENT OF MARTIN A. KNAPP, CHAIRMAN OF THE INTER-
STATE COMMERCE COMMISSION—Continued.**

Mr. Chairman, it was very gratifying to me on Monday, when your chairman suggested that your committee was more concerned just at present considering principles of railway regulations than in discuss-

ing details of particular measures. That seems to be a very wise attitude. We should at first decide what we should attempt to accomplish, and when we have decided that we are prepared to examine the particular methods proposed for realizing our purpose. At the same time the discussion may be so discursive as to be unprofitable, and if we get very far beyond the range of any legislative proposal we are liable to indulge in more or less idle speculation.

So, with your permission, this morning I shall try to bring the discussion to a somewhat more definite and practical basis.

In the ten years and more during which I have been a member of the Interstate Commerce Commission I have endeavored to give careful and conscientious study to the problem of railway legislation. I appreciate its difficulty; I think I understand how serious the question is in its various aspects. My experience and reflection leads me to be very conservative. I think our legislative policy should be developed by evolution and not by revolution, and I am not at all disposed to advocate any very radical or novel additions to the present laws upon this subject. Indeed, I think all the Commission has ever recommended to Congress is that such changes be made in the present act as will enable its purpose to be accomplished and will permit it to effect the results upon railway operations which its framers obviously intended.

We are not prepared, in my judgment, to enter upon novel fields of legislation, and we may wisely, for the time being at least, confine our efforts to such amendments that will give the law the strength and efficiency which it was supposed to have when it was adopted. Nor am I aware of any measure pending before this committee which goes any farther than that.

Now, the while I ask you, gentlemen, to keep in mind the distinction which I endeavored to point out on Monday, for I regard that as fundamental; and clearness of thought at the very foundation of this subject will aid us to intelligent conclusions.

There is a radical difference, fundamental in its nature, between measures which are devised to secure the observance of railway tariffs and measures which are designed to correct those tariffs when they are found to be in violation of the principle of this law.

You can only correct that class of evils which results from departure from the public tariff; that class of evils of which rebates and rate cutting and similar devices are types, you can only deal with them by making them, as the present law makes them, misdemeanors and seeking to punish them as such. Of course all those evils, all evils of this class, have their origin in the competition between carriers, and I do not hesitate to express my own conclusion, at least, after very careful examination and reflection, that so long as that competition remains unrestrained and unregulated, just so long evils of this kind will inevitably recur.

When I ask your committee to amend the criminal provisions of this law, which are found in the tenth section, I do not wish to be understood as implying a belief that those amendments will be a panacea for the evils against which they are directed. I perfectly agree with Commissioner Prouty that railway competition, as it has existed in this country, is gradually and surely disappearing. I do not think it can be relied upon in the future as the agency which shall secure reasonable rates; nor do I believe that it ought to be relied upon. My own judgment is that to secure reasonable rates of transportation and jus-

tice to the shipper as well as the carrier, our legislative policy should, in some respects, be materially altered; that we should recognize the tendency, and in many respects the desirability, of railway association, and devise such measures as will secure the benefits of that association without subjecting the public to the dangers of excessive and unreasonable charges. But I should not be justified, I think, in discussing that aspect of the general question at this session of the committee.

If it should be your pleasure later on to desire my personal views respecting this whole question of railway competition and railway cooperation I shall be very glad to furnish them; but I do not understand that any project of that kind is pending before this committee, and I think I will be likely to serve you best if I confine my remarks to the questions which are involved in pending measures.

So I say that on the theory which now obtains in our statute laws, both State and national, that railroad competition is to be encouraged and enforced so far as possible, and that no form of railroad association is to be legalized; on that theory I say that the amendments to the tenth section, substantially as they appear in the Corliss bill, are of urgent importance and ought to be adopted. I do not know of any person who hesitates to say that the carrier corporation should be made liable for the transactions which are of the character now under consideration.

Mr. STEWART. Before you get through will you suggest any amendments to the Corliss bill which you think would be agreeable to the Commission, if you have any?

Mr. KNAPP. Later on, in another connection.

I want to repeat that there are two changes in the law relating to the enforcement of criminal remedies which are important, against which there is no reasonable objection, against which I venture to say no one will come here and interpose opposition. They are that the corporation carrier shall be made liable, and not simply its agent and representative, and that the shipper shall be made liable who knowingly accepts a lower rate than that provided by the published tariff without being obliged to show that he thereby secured a discrimination in favor of himself and against his business rivals.

Those two changes in the tenth section would greatly aid, in my judgment, the practical administration of the criminal machinery devised for preventing rebates and compelling carriers to observe their published schedules.

Mr. MANN. In your opinion, would it be sufficient to provide a penalty against a shipper who knowingly received a reduced tariff, or follow a provision of the Corliss bill and provide a penalty against the man who does receives a reduced tariff?

Mr. KNAPP. As I said on Monday, I had not supposed that this bill was so framed as to make an innocent shipper liable. I assumed that he would be indictable only in a case where he knew what the published rate was that other people had to pay and secured by arrangement with the carrier a preferential rate for himself. If that distinction can not be made in the law, nevertheless I think the change should be made, because I do not think instances would ever occur where a man actually innocent, acting in good faith, would be made the subject of prosecution.

Mr. MANN. I should think you would find loopholes enough in this

law to lead you to think that it was quite necessary to guard against such things in making a new law.

Mr. FLETCHER. Would not that be extraordinary legislation, rather unusual in this country, to legislate against a man making a good bargain and shipping his merchandise, his stock, or whatever he has to ship, making him liable for taking a less rate, if he could get it; is that not rather an extraordinary provision?

Mr. KNAPP. Mr. Fletcher, I think not. Now, it all depends, gentlemen, upon the point of view. If you say that the railroad is a private industry, just like a farm or a factory, then every man should be free to make the best bargain he can with the carrier whose services he desires. If you take that position, then this entire act to regulate commerce should be repealed and the whole effort at railroad regulation should be abandoned.

Leave it a matter of purely private arrangement, that every man and any man might make his own bargain with the carrier, just as he now makes it with his shoemaker or his grocer. But if you regard the railways as performing a public service, discharging a function of the State, doing a thing which the State is bound to do except it abstains from motives of expediency, then I think you must reach the conclusion that our laws should be aimed to secure precisely equal treatment to all shippers under like circumstances. And, to my mind, it is just as wrong—I mean wrong against social order and the rights of the citizen—to permit one shipper to get his traffic carried at less rates than his rivals pay as it would be to let one man buy postage stamps cheaper than his business rivals or get his imported goods through the custom-house at less rates than other people are compelled to pay.

Mr. MANN. There is no law against a man buying postage stamps as cheap as he can buy them.

Mr. KNAPP. No; but no man can buy them, in the first instance, for any less than a fixed sum, which everybody must pay.

Mr. COOMBS. Here is a distinction, it seems to me, you fail to make. In regulating freight you fix the maximum to be charged. You do not intend to fix the rate, but you fix the maximum, as I understand it. Now, coming within a maximum under the maximum, is not the person permitted by right to engage in whatever arrangement he might make?

Mr. KNAPP. Absolutely not.

Mr. COOMBS. Do you think he ought to be cut off from any field of legitimate arrangement—I mean legitimate on his part—simply because the Government has the right to say to the railroad, as a common carrier, what their maximum charges shall be?

Mr. KNAPP. Yes. If I perfectly apprehend your question, I will answer it this way: The Commission or any other agent of the Government charged with the administration of its laws in this regard should be authorized in certain cases, which I shall come to presently, to prescribe the maximum rate; but the carriers who have the complete initiative in rate making should be at liberty at any time to publish and apply a lower rate than that which has been prescribed. But that lower rate should be open and available to everybody.

Mr. COOMBS. That may be true in theory, but do you seem to go that far when you regulate the maximum rate? Should you go farther than that, into the business of concerns and into the business of individuals who have dealings with the concerns?

Mr. KNAPP. Mr. Representative, the present law goes to that extent.

Mr. COOMBS. I am asking for information; you have studied these questions, and so I am asking you about them. That is my only motive.

Mr. KNAPP. What little knowledge I have gained from experience ought to be at your service, and very cheerfully is at your service. I will be very pleased to answer to the best of my ability any questions you or any other member of the committee may propound.

Mr. COOMBS. I simply wanted to ask the question as to how far you can regulate the common carrier after you have fixed the maximum rates he is permitted to charge, how far then beyond can you go into the business of his concern and the minutia of it and regulate it. That is what I would like you to discuss.

Mr. KNAPP. There is no question about the power of Congress, and, in my opinion, not the slightest question about its duty. No proposition is more intolerable to my mind under modern business conditions than to say that one shipper under present circumstances should be able to make and carry out a private bargain with the carrier as the result of which he secures the benefits of a public service for less than his business rivals pay, and thereby not only get cheaper transportation, but through that transportation get command of the market which enables him to undersell all his rivals.

Mr. MANN. In that connection I would like to ask a question.

Mr. KNAPP. Certainly.

Mr. MANN. You have had recently an investigation of the dressed-beef shipping. Suppose, for instance, that one of the concerns shipping dressed beef after a law like this goes into effect does make an agreement with one of the railroads, which is secret and very difficult to obtain knowledge of, and gets a preferential rate considerably below the published rate. His rival shipper has reason to believe that that is the case, is morally certain that that is the case. What is he to do? Go out of business, or put his time in in endeavoring to enforce the criminal law or in endeavoring to secure a lower rate himself?

Mr. KNAPP. That he will do the latter as a matter of practical conduct I have not the slightest doubt. That is just what happens everywhere.

Mr. MANN. But what would you have him do? You want to have him punished with the \$5,000 fine for every time he does that?

Mr. KNAPP. No; not the man who does not get it, but the man who does.

Mr. MANN. But what is he to do? Go out of business or seek to obtain it himself?

Mr. KNAPP. Well, that, of course, is the hardship which every business man must encounter under possible circumstances.

Mr. MANN. I know of no other case in business where a man is punished for doing that thing.

Mr. KNAPP. Now, let us see. Suppose you are an importer, and you know to an almost certainty that your rival gets his goods through the custom-house on an undervaluation. Are you going to try and do the same thing?

Mr. MANN. We say in Chicago that we will have to go out of business because they do that in New York, and we are making a dreadful kick about it.

Mr. KNAPP. And you ought to.

Mr. MANN. This matter of a duty to the Government, and this mat-

ter of interfering with a private contract are two different things; and if you can name any other case where that is done I think it would be very valuable.

Mr. KNAPP. You see I differ from you on a fundamental idea.

Mr. MANN. You do not differ with me on anything; I am seeking information and not expressing an opinion.

Mr. KNAPP. That is not a matter of private contract—

Mr. MANN. Let us get through the other first. That is purely a matter of argument. That is not a matter of information. What would you have the man do in a case of that sort?

Mr. KNAPP. I can not be made the custodian of that man's conscience or undertake to say what he ought to do.

Mr. MANN. Well, what can he do under a law like this?

Mr. KNAPP. He can lend himself actively to the effort to prevent a recurrence of the wrong by which he is defrauded.

Mr. MANN. Oh, he might constitute himself into a detective or a criminal bureau and lose his business while he was prosecuting his case up through the courts, if he could obtain information at all, which he could not do by himself.

Mr. KNAPP. I grant all that. I think I appreciate its difficulties. If a strong and powerful shipper can bring pressure to bear on a railroad carrier which gives him a lower rate, he drives his rivals out of the field, and right there—

Mr. MANN. According to the theory we have got so far if we passed this law he would drive his rivals out of the field.

Mr. KNAPP. Not at all.

Mr. MANN. Well, what will the rival do now who can not get the lower rate, knowing morally that his rival has a lower rate; what is he to do?

Mr. KNAPP. I say he should do exactly in principle what a business man would do who found himself undersold by a rival whom he believed had stolen the goods.

Mr. MANN. Well, what would he do?

Mr. KNAPP. He does not go and steal some goods himself.

Mr. MANN. No; but he meets the cut right along; he either meets the cut or goes out of business.

Mr. KNAPP. I want to make two brief observations on that point. I see exactly where there may be a divergence of view. As I say, I maintain that these are not matters of contract at all. I do not ride on the cars or have my traffic carried by virtue of a contract with a carrier, but in the exercise of my political rights. A merchant may stand at his door and say I shall not enter. He may refuse to sell me his goods even if I offer him cash for them. He is free to sell to me at one price and to you at another price. All the transactions between men which involve the change of property are contract relations, but the relations between the public and a public carrier are not contract relations, and the rights of the public grow out of their inherent political rights as citizens. The railroad manager can not stand at his station and say that I shall not enter. He is performing a public service; he furnishes the facilities of that public service under conditions which require him to offer them to everybody and on equal terms. That is one observation.

The other is, if you take the contrary view, you simply turn over the commerce and business of this country to a few multimillionaires;

and kindred to that I beg to make this observation, and I think it is worth a moment's attention:

I believe that independent of the exercise of public authority there is no agency which will operate so forcefully to bring down published rates as to see to it that they are absolutely observed in all cases. And why? Railroads are sensitive to public opinion and they yield to public pressure. The man that presses them hardest is the man that has got the largest shipments to offer, and if a carrier in a given situation, by yielding to the importunity and pressure of one or more powerful shippers, can thereby hold up his rates as to everybody else, he is not going to reduce them. When it gets to the point where the biggest shipper can get no better rate than the smallest shipper, where the published tariff is applied without variation or exception to everybody, you will have the united pressure of the entire business community demanding a reduction of rates, and you will not get it in any other way.

Mr. MANN. And the millennium?

Mr. KNAPP. No; not the millenium.

Mr. MANN. You will have the millenium before you get to the point where nobody will make a bargain if he can which will be to the disadvantage of somebody else.

Mr. ADAMSON. I understand you to say as to whether a merchant will trade with you is a matter of his own business; but as to whether you ride on a railroad train or not, no matter what your condition or circumstances, is a political right which nobody can gainsay. I understand that few of the railroads are chartered by the Federal Government; that they are chartered by the States. Is that true?

Mr. KNAPP. That is quite true.

Mr. ADAMSON. Do you derive your jurisdiction and authority for the Interstate Commerce Commission anywhere except from the clause authorizing Congress to regulate interstate commerce and commerce with the Indian tribes?

Mr. KNAPP. That is the principal source of authority.

Mr. ADAMSON. Is not that the only thing in the Constitution giving you authority?

Mr. KNAPP. Well, Mr. Representative, we do not any of us know how far our Supreme Court would go in a direction of this kind under the general-welfare clause of the Constitution. I agree with you that the only specific authority for railroad regulation is found in the clause you have referred to.

Mr. ADAMSON. When it can not be stretched any further we go to the welfare clause as more elastic. Now, does the commerce clause recognize any such distinction as you make between public or quasi public institutions and private institutions?

Mr. KNAPP. In that clause.

Mr. ADAMSON. What clause does?

Mr. KNAPP. By giving the Congress the right to regulate commerce. It is not the right to regulate private business.

Mr. ADAMSON. In regulating commerce, interstate and foreign, and commerce with the Indian tribes, does that clause make any distinction as to the business which corporations do and the business which private individuals do? Do we not under that clause legislate on every conceivable subject about what individuals do and what mercantile firms do, and everything like that?

Mr. KNAPP. You have legislated on some things of that kind which the Supreme Court has said are unconstitutional.

Mr. ADAMSON. We have spent six or eight weeks here in legislating as to what men should eat and wear, and whether one firm should sell certain things or not in competition with other firms. That is all under this clause.

Mr. KNAPP. So far as legislation can be sustained under the commerce clause you have a right to enact it.

Mr. ADAMSON. What is in it to justify such a distinction as you make? Private men, merchants, all sorts of shippers and manufacturers, and everybody else deal in interstate commerce. That clause gives us the right to regulate that.

Mr. KNAPP. Surely.

Mr. ADAMSON. Then why is not the question Mr. Mann asked you entirely pertinent?

Mr. KNAPP. I admit its pertinency.

Mr. ADAMSON. And you did not think they were on a parity at all; you said we had a right to deal with the railroad question because they were quasi public institutions.

Mr. KNAPP. That is quite right.

Mr. ADAMSON. When the Government that is dealing with them has not chartered a single line, and yet all the authority you have is from that clause which gives us the authority to regulate commerce between the States without regard to corporations or private individuals, one business or another business.

Mr. KNAPP. I think this is getting very far away—

Mr. ADAMSON. I do not care how far it is leading; I wish everybody would see how far it is leading.

Mr. KNAPP. There was a law before the Federal Constitution and before any Congress was created. There is no rule of social order, there is no public regulation which has governed the affairs of men more ancient, more unquestioned—

Mr. ADAMSON. There was not any railroad ahead of the Federal Government.

Mr. KNAPP. Pardon me (continuing)—than the common highway. Now, in the very constitution of society the means of communication must be provided.

Mr. ADAMSON. By somebody.

Mr. KNAPP. It must be provided by the State, and there is no State in modern history—and you can go very far back in ancient history to find an exception—that has not provided the public highway. And this is the point of importance, Mr. Representative. Take all history that you can find on the subject and you find there is no exception to the rule that in the use of the public highway one man had exactly the same right as another; and such a thing as preferences in the way of the public highway has never been tolerated in any civilized country, and when all our inland commerce was carried over the ordinary highway, when all our distribution was by animal power, every individual had exactly the same right as any other individual in the use of the only agency which then existed.

A MEMBER. How about turnpike roads?

Mr. KNAPP. Turnpikes are no exception, because the tolls were always the same.

Mr. ADAMSON. Will you give me an instance where the Federal Government has fooled with turnpike roads?

Mr. KNAPP. No, sir.

Mr. ADAMSON. The Federal Government has nothing to do with matters of that kind.

Mr. KNAPP. If you will read the Kentucky bridge case, and one or two other cases that I might be able to cite you, you will find the subject fully discussed.

So I start, gentlemen, with the proposition that the right to use the highway on equal terms with every other man is an inherent and inalienable right.

Mr. ADAMSON. I understand the theory, and have long understood it, that if you do not find the authority in the Constitution which you want you can get around it by saying that the law would have been so if we did not have the Constitution; but in reference to the subject under discussion the only authority you have at all under the Constitution, as I understand it, is the authority given you in that one clause in reference to commerce.

Mr. KNAPP. The distinction I made has been drawn by the United States Supreme Court, drawn plainly and repeatedly drawn, with such clearness of definition that no man who reads can misunderstand. Take a familiar illustration. Congress enacted what is known as the antitrust law. I venture to say at the time it was passed not one man out of ten believed that it had any application to railroads; but it has been so construed by the Supreme Court that it does not apply to anything else; and if you will take the trouble to read what the Supreme Court said in the sugar case under the antitrust law and what it said in the trans-Missouri case and in the Joint Traffic Association case you will see exactly the distinction I make and you will see it verified with citation of authority which puts it beyond doubt.

Mr. MANN. Do you say the antitrust law does not apply to anything but railroads?

Mr. KNAPP. I say practically it does not apply to much else.

Mr. MANN. Do you say that?

Mr. KNAPP. I do not care to discuss the antitrust law. I say broadly that the construction which the Supreme Court has given it does not give it much field for application except as to railroads.

Mr. COOMBS. Speaking of the penal clause, putting a penal clause in the bill which would render liable the railroad companies and the shippers too for making any combination or entering into any conspiracy to cut rates that is in the nature of a conspiracy between the shipper and the railroad to destroy other shippers, could there possibly be such a thing as prescribing punishment for one without prescribing an equal punishment for the other?

Mr. KNAPP. Undoubtedly.

Mr. COOMBS. How could you do that. Could you constitutionally say that one of the conspirators was guilty—that is, the railroad—and not say that the other was equally guilty?

Mr. KNAPP. Oh, yes. Take the most familiar illustration: Laws in many States regulate the sale of intoxicating drinks, making a violation of that law punishable—

Mr. COOMBS. But that is not a conspiracy against some one else who wants to drink or wants to sell.

Mr. KNAPP. I will not undertake to say that; but the point is now

that there may be two parties to a given transaction, one of whom is liable for indictment and punishment for his participation in it, and the other not liable. As I said on Monday, gentlemen, if in your judgment no shipper should be liable at all, I am perfectly content with that view.

Mr. COOMBS. You think that would be constitutional, do you?

Mr. KNAPP. I think there is a good deal to be said in its favor; that as a practical method of giving efficiency to this law it might be wise to say that the shipper is not liable at all. Let him be free to get the best bargain he can and put the liability, the criminality, solely on the carrier. But I have assumed that you were not disposed to make so radical a change as that in the law.

Mr. ADAMSON. That makes the inducement to harrow the railroad companies to try to induce them to do wrong.

Mr. KNAPP. I do not say I favor it. It does not appeal to my sense of justice. But as the present law stands you attempt to reach the shipper and you should have a provision which would enable you to actually reach him, and if you can reach the shipper only when he gets a discrimination in favor of himself you defeat the purpose of the law, which is to include the shipper. If you are going to make the shipper liable at all, make him liable whether there is a discrimination or not.

Mr. ADAMSON. Make him liable for attempting it?

Mr. KNAPP. Yes; for attempting it. If you think best to leave the shipper out altogether and subject only the carrier to the criminal remedy, very well; I have no quarrel with that position. So, to put it together for a moment, I am only suggesting that, so far as you are to rely on the use of criminal remedies to prevent such offenses as rate cutting and rebates and other secret practices, you ought to amend the law in the two respects I have pointed out. They would not increase the authority of the Commission in the slightest degree.

When you make a given transaction a misdemeanor, you thereby remove it from the control of any administrative body. A misdemeanor under the act to regulate commerce is exactly the same sort of thing as a misdemeanor under the postal laws or the revenue laws or the tariff laws; and in every case when you make a given transaction a misdemeanor you can only proceed, having regard to constitutional rights, by indictment and trial before a petit jury, and you can not have one system for misdemeanors under the act to regulate commerce and another system for misdemeanors created by other laws. But I do say that the two changes suggested in the present law will very greatly aid, in my judgment, the prosecuting authorities and the Federal courts in their efforts to prevent these offenses. And, as I have already said, I have not yet heard anybody make objection to them, and I venture to say that no man interested in railroads or otherwise will come before this committee and indicate the slightest objection to the two changes in the law which I have now referred to.

Now, unless you desire to ask some questions upon that branch of the case, I will, with your permission, proceed to the other one.

Bearing in mind that the railroads exercise the initiative in rate making; that they are free in the first instance to put in just such tariffs as they see fit; that they are under no legal restraint in that regard, the question comes, What will you do or undertake to do in providing methods by which that tariff rate itself can be changed if it

is found to be excessive or unfairly adjusted as between different communities or different articles of traffic?

That is the question. And I beg to say, gentlemen, that that is the great question, because as anyone must see, following out the suggestion made by Commissioner Prouty yesterday, the railroad competition which has produced all these secret arrangements, the competition without which these secret practices would not occur, is a thing that is not much longer to remain; whether restraint is put upon that competition or permitted by legislation in that regard, or whether in default of such legislation and induced powerfully by the existing legislative policy of the country, or whether, as the result of the natural and inevitable tendency there is to be a very complete railway combination, and I do not believe there is any earthly power to prevent it. Competition between different lines of railway which has existed and which has had its influence upon rates, will, to a very great extent, disappear. And in that connection, I need not enlarge upon the very suggestive statements of Commissioner Prouty yesterday.

I may, however, if you will bear with me, allude to one matter that is very important in that connection. I said on Monday that I thought you would be surprised upon examination to find how slight and inconsequential has been the reduction in tariff rates in this country, say in the last ten years, which can be attributed to railway competition. There is a form of competition, however, which has a very powerful influence upon tariff rates and upon attainable rates, and that competition will continue for a long time to come. That is the competition of the markets. Chicago originates an immense tariff; so does St. Louis. The carriers leading from Chicago need that traffic for the revenue it secures. The carriers from Chicago therefore have got to make a rate as compared with rates from St. Louis which will enable the Chicago man to do business, for the railroads are just as anxious to get the traffic as the merchant is to sell his goods, and that is a thing that is going on all over the country.

New York and Philadelphia and other cities on the Atlantic seaboard are competing for the enlarging market south of the Ohio and Potomac rivers, and Chicago and Milwaukee and other cities in the Middle West are also eager to secure the trade of that same territory, and the lines which lead from one section of the country in that consuming territory and from the other section of the country are not likely to be confederated, and if they could be it would not be of any advantage to either of them; and the pressure of the producing public to sell the goods and the competition between sellers in the consuming markets has a very powerful control upon obtainable rates. That influence of course is to remain with us. But the influence of mere railway competition, the mere rivalry of the carriers themselves, is a thing we can no longer rely upon.

Now, I say the carriers are to go on as now exercising the initiative of rate making, and whether separate and independent or combined and confederated, whether controlled by different boards of management or practically dominated by one or two men, they will still be under no legal restraint, in the first instance, to establish and impose just such tariff rates as are induced by their interest. And in that state of things the question comes—gentlemen, it is a question for you a great deal more than it is for me, vastly more for you; your responsibility far exceeds mine—the question for you is: Will you provide

any way by which when the combined railroads of the country publish a tariff and impose it upon all shippers the question of the reasonableness of that tariff will be open to consideration, and if it is found to be excessive or to be unfairly adjusted as between different communities that there shall be some way by which the injustice can be corrected? That is your question, gentlemen.

For myself, so far from coveting authority, I should shrink from the responsibility involved in its exercise. So far as my personal effort is concerned, if I shall remain a member of the body to which I belong, I should feel much less strain under the law as it now is than under one which added to the actual authority of the Commission; because it is a very great responsibility to assume. But it is a question of the most vital public interest. It is a question which comes directly to the lawmaking branch of the Government. It is for you to say, gentlemen, not for me. It is for you to say whether the tariff rates which the combined railway interests of this country see fit to publish and impose upon the public shall be subjected to any actual control.

If not, leave the law as it is; if otherwise, then you must make some change in it.

That brings me to speak briefly about the changes proposed in this regard by the bill before us. Let me say again that I am not advocating any radical alteration in our laws, any great reach of authority by the Commission. I undertake to say that the changes which would be effected by the adoption of the Corliss bill, as far as it relates to the matter I am now discussing, would only put the law just where everybody supposed it was when passed. For ten years the Commission charged with the administration of this law—from 1887 to 1897—assumed that it had authority to do everything which this Corliss bill would permit it to do. And there are two things I might say in that connection.

When everybody believed that there was no such outcry against the danger of giving the Commission authority, and when everybody believed that—and I venture to address this particularly to Mr. Mann—the Commission was not overwhelmed with a vast number of complaints; they did not exceed in number the ability of the Commission to dispose of; nor do I believe that the changes proposed by this bill would result in flooding the Commission with a vast number of complaints.

MR. MANN. It would if we can take any criterion from the statements made by the witnesses we have had before us.

MR. KNAPP. I would answer that in this way, Mr. Mann. If you reason from the answers of the witnesses before the Cullom committee in 1886, before this law was passed, you would have been equally warranted in saying that when that law was passed the Commission should be flooded with complaint; but the law was passed and the flood did not come. There are complaints, quite numerous complaints, and many of them are important, but I do not think it is at all beyond the ability of a capable Commission to dispose of every complaint which would come up, with reasonable promptness.

MR. MANN. Of course, I have heard the statement made a great many times that for the first ten years everybody believed that the Commission had power to fix rates. My recollection is that the Congress that passed the act did not believe they were giving such

authority. The act does not confer any such authority, and the railroads have generally denied that any such authority existed. What the fact may be I do not know; I question very much whether everybody believes it.

Mr. KNAPP. I think I was careful not to say that everybody believed it. I spoke of the general popular understanding. And let me say now, in support of that, that in the complaints which were filed before the Commission—I am speaking now of formal complaints which under this law may be served on the carrier and which can only be investigated after notice and full hearing—and which they were required to answer, not one of them in answering set up the want of authority on the part of the Commission to grant the relief which they complained of.

Mr. MANN. Did not those petitions invariably declare that the rate was unreasonable?

Mr. KNAPP. Yes; and in many cases asked for a specific reduction. More than that, Mr. Mann. When the Commission took proceedings in the courts to enforce orders which had been disregarded in the respect I am now considering, which is, as you know, by suit brought for that purpose, based on the Commission's findings, and the carriers answered this, they did not then set up the want of authority on the part of the Commission to enforce the order which was sought to be enforced by the proceedings, and the question was not raised until nearly ten years after the Commission was organized, and was not decided until along in the year 1897, and then in a case which involved other questions and in an opinion which left much room for doubt as to what the Supreme Court would say when the precise question came before them. That is the actual history of the thing.

Let me say further, Mr. Mann, in the first eight months after the Commission was organized, then one of the most eminent jurists this country ever produced, Judge Cooley, was its chairman, the Commission made orders which in principle and in terms covered every order which the Commission could make under this Corliss bill.

Mr. MANN. It has been stated that Judge Cooley did not believe that the Commission had authority to make rates.

Mr. KNAPP. I know it has been.

Mr. MANN. I said did not "believe." I should have said "decided" that the Commission did not have authority to make rates.

Mr. KNAPP. I do not think Judge Cooley is on record as saying that. I had the honor to be associated with him, to my great advantage, for some months upon the Commission—in my first service with the Commission—and I never heard him say that. I know he joined in decisions where that authority was exercised,

Mr. MANN. You know that claim is made?

Mr. KNAPP. Oh, yes; do not misunderstand me; I am not for a moment pretending that the law was clear in that respect, and I am not implying the slightest criticism upon the Supreme Court of the United States.

Mr. MANN. I understand; it is a question of what the Commission actually did.

Mr. KNAPP. On the contrary, I think the Supreme Court has correctly construed the law as a matter of statutory provision. There are one or two questions not relating to the question I am now discussing on which I am not able to bring my mind into harmony with the decision of the court; but so far as its decisions affect the question I

am now discussing I am bound to say that as interpretations of the statute the decisions are well grounded. And I am only suggesting, not that the Supreme Court is wrong, but that this law ought to be corrected—can wisely be corrected so far as to give the authority which was popularly supposed to be invested in the Commission.

I will add, Mr. Mann, that while the statute is vague and uncertain and had to be settled by the Supreme Court, some of the ablest lawyers in the country are on record in written opinion affirming that the Commission had the authority which it attempted to exercise during that period.

Mr. MANN. You know a lawyer will give an opinion on any subject or any side of any subject if you get the right one.

Mr. KNAPP. I have no doubt you are as familiar with that question as I am, Mr. Mann. Now, let us see for a moment just what it is proposed to do. Let me put it in this way. The Congress has absolute power. The Supreme Court, as far back as 1825, gave to the commerce clause of the Constitution the broadest possible construction. It affirmed on that early date, and has repeated the affirmation many times since, that the power given to Congress by the commerce clause is plenary and exclusive, and that it is subject to no limitations whatever except such as are found in the Constitution itself. And they decided, further, away back in that early day, that that power extends not only to the subjects of commerce but to all agencies and instrumentalities by which that commerce is carried on. So that not only the things shipped but every appliance which is used for that transportation is completely and absolutely in the control of the Federal Congress.

Now, no one is proposing that the legislative power of Congress shall be transferred to the Interstate Commerce Commission. That would be an absurdity. Now, what is it that is proposed? That some portion of that authority be delegated, and under specific conditions. For example, the Commission can to-day make no order which even condemns an existing rate until a complaint has been filed, until a complaint has been served on the carrier, until there has been an investigation upon notice with full opportunity to disclose all the reasons for maintaining that rate. If the Commission should to-morrow make an order declaring any railroad rate to be unreasonable without such a petition and without such an investigation, the courts of course would refuse to enforce it, and say that the Commission had not any authority to make it. That is too obvious for discussion.

Mr. RICHARDSON. Right there; you say you can not now institute any proceedings without a complaint. Do you propose to give authority to the Commission to go forward and institute proceedings without a complaint?

✓ Mr. KNAPP. No. On the contrary, I am very much opposed to that. While some States have gone to that extent, I think it would be very unwise for the Congress to undertake that by direct legislation or by any power to delegate that to the Commission.

Mr. MANN. I have wanted to ask you a question in reference to that. If a petition is presented under your practice complaining of a particular rate, what do you do if you find that you want to extend your order further than is suggested in the petition? Suppose a complaint is made by one city against a rate, and that is all that is referred to; but that involves the rate to another city.

MR. KNAPP. Perhaps I can best answer that, most intelligently answer it, by describing briefly what actually happens. Now, in many cases where a community feels aggrieved, either because it says that all the rates it pays are too high or because it conceives itself to be prejudiced because some rival community gets more favored rates, frequently a competent lawyer is employed in the first instance who prepares a petition, such as is contemplated under the present law, a petition which is ample in all respects, which sets forth the facts, gives the nature of the grievance, the relief which is demanded, and which is believed by them to be justified. In such a case as that the Commission on receiving the complaint files it, and thereupon serves a copy to the carriers, which are made defendants in the proceedings, and requires them to answer ordinarily within twenty days, and when their answers have come in, then the case is at issue; it is like any suit in equity. And then the time and place is fixed for hearing.

Then the parties appear, produce their witnesses, and they are sometimes cross-examined, and the fullest opportunity given to both sides to disclose all the facts which bear upon the particular grievance presented by the complaint; and then the Commission decides. That is a very common thing.

But it very often happens that complaints come to us in the form of letters, or they are drawn by some business man or some lawyer who is not familiar with this law, and they are inartificially drawn. The facts are not properly stated. They fail to allege, perhaps, the jurisdictional facts; they may fail to make all the carriers who are interested in the rate parties in the case. Now, when a complaint of that kind is received we do not file it as a matter of course. We take it up with the parties by correspondence, and explain that if they wish to present the grievance their complaint needs to be amended, and possibly other railroads brought it. In other words, we aim to avoid all technicalities and not hear a case by testimony and documentary proofs until there is a complaint served upon the carriers which apprises them fully and fairly and gives them every opportunity to suspend a rate which is assailed.

MR. RICHARDSON. Do you not think it would be a better plan, according to the rule in all courts, to let them get up their whole case, instead of the judges helping them?

MR. KNAPP. Well, Mr. Representative, these are not complaints of individuals, and you must bear in mind all the while that any order that is made affects everybody as well as the complaining party.

MR. RICHARDSON. But bear in mind this, also, that a judge who fixes up the amendment and so on is likely to sustain it.

MR. KNAPP. Judges are holding court to settle disputes between individuals. The Commission is not a court. It is an administrative body. It is charged with the administration of a law. It is the duty of the Commission to use every proper method of realizing as far as possible the purposes of that law and administering it in the interests of justice and not in the interest of individuals, and I do not think the plan which the Commission adopts is open to any criticism. I think it is a fair and honest one.

MR. RICHARDSON. Then it would be equally fair to give the railroad the opportunity of any suggestion in their answer?

MR. KNAPP. Oh, they have the opportunity.

Mr. RICHARDSON. You make the same suggestions to the railroads?

Mr. KNAPP. They make their answer, of course.

Mr. RICHARDSON. They generally have competent and able lawyers; there is no trouble about that.

Mr. KNAPP. Surely.

Now, not only can the Commission make no order until such a complaint has been filed, served on the carriers, answered by them, and the issue tried, but it can only make such an order as is justified by the facts proven. The Commission has no arbitrary power to make rates. It can not act in any *ex parte* or *ex cathedra* manner. You gentlemen can pass a law and fix the rates on grain from Chicago to New York without giving anybody a hearing; it becomes the law of the land. We are not proposing that the Commission shall do anything of that kind, and it is assumed that all the safeguards which are now provided shall be continued and that the Commission shall have no authority to even condemn the rates which carriers themselves establish, except upon a complaint investigated after the necessary and full hearing. That is all that is proposed.

Now you come to the crucial question: Shall the Commission have any more authority in such a case than simply to say this rate that is complained of is wrong and you must stop charging it, or shall the Commission in such case have authority to name the rate which it thinks should be substituted in the future for the one thus condemned? That is all there is of it. Now, at present, since the decision of the Supreme Court, of course our decisions have conformed to that construction of the statute; and when a complaint is made that a rate is excessive, and that has been served on the carriers, and that has been answered, there has been a trial of the whole question, with every facility and opportunity to show all the facts which bear upon the question. All the Commission can do now is to say if it so finds upon the facts, if it is warranted in so finding, "This thing you are doing is wrong, and you must stop it." That is all we can say. And I am assuming in that, Mr. Mann, that the Supreme Court will sustain that authority whenever the precise question comes before it.

It has not done so yet, but I assume, because I firmly believe that if the rate complained of is a dollar and the Commission after this inquiry in the way I have described says a dollar is unreasonable and therefore violates the first section of the law and makes an order requiring the carrier to cease and desist from thereafter charging that rate—I believe the Supreme Court will affirm the authority of the Commission to make such an order. ✓

Mr. MANN. I should say that the opinions of the Supreme Court on other cases left that as clear as daylight could possibly leave it.

Mr. KNAPP. I had not supposed that there was any doubt about that.

Mr. MANN. They have said so repeatedly.

Mr. KNAPP. The result, of course, is that after all this elaborate investigation, which may consume considerable time and involve considerable expense to the parties, the Commission can go no further than to condemn the particular thing complained of without being able to order something to be put in substitution which shall remove the grievance; and of course, in such a case as I have named, if we could condemn a rate of a dollar, the order of the Commission could be complied with by making that rate 99½ cents.

Now, all that is proposed is that in such a case as I have named, in order to give the Commission jurisdiction at all, there must be a formal complaint served on the carriers, opportunity for them to answer, and a full hearing conducted with all the formality of a judicial inquiry. Then if the Commission in such case and upon the facts thus disclosed reaches the conclusion that the rate in question is wrong, it shall have authority to name the rate which it thinks would be right, to be put in place of the one in controversy.

The CHAIRMAN. Under the practice of the Commission and under the law, how comprehensive might that question be; could more than one rate—that is, one rate on one article between two places—be considered at the same time under this procedure?

Mr. KNAPP. Undoubtedly.

The CHAIRMAN. Or could there be grouped many?

Mr. KNAPP. Undoubtedly. All the rates could be assailed in one procedure. It is within the scope of the bill.

The CHAIRMAN. Then there may be more than one party?

Mr. KNAPP. Surely. It is ordinarily the case that a complaint is against more than one carrier.

The CHAIRMAN. Then in that event in one action and as the result of one hearing under this section the Commission would be authorized to fix the entire rates of a State, possibly, or of a number of States, a group of States? Is that your judgment?

Mr. KNAPP. I think I may say that that would be within the possible scope of the measure, but I do not see how that could practically occur, because no—

The CHAIRMAN. Give us some idea of the extent to which it might occur in your judgment, or probably would occur?

Mr. KNAPP. Well, before doing that, let me suggest something which I think should be kept in mind on this branch of the discussion. In my judgment, it is one thing to condemn a rate simply because it is excessive, and it is quite another thing to condemn a rate because it is discriminative.

The constitutional rights of the carriers in respect of their revenues would only permit the reduction of a rate where no element of discrimination enters except upon satisfactory proof that their revenues under the rate complained of were greater than they were entitled to receive, and that the reduced revenue which the lowered rates would produce would still be all that they would be entitled to exact from the public; but where the element of discrimination enters, as the Supreme Court has said, neither the Congress nor the administrative body would be under quite the same limitations, because the carriers have no right, merely for the purpose of getting more revenue, to so adjust their rates as to unduly prejudice one community or give a rival community undue advantage.

While I agree with what Commissioner Prouty said, that the future question, the question the country is coming to presently, is the question of the reasonableness of the general basis of rates, the questions which so far have come up, excepting the recent one which has grown out of the raising of rates by changes in classification, with that exception the complaints have more generally been complaints of discriminations between localities or between different articles of traffic, and the grievance most commonly asserted is a grievance of that kind.

To illustrate, Mr. Chairman, the Commission conducted an investiga-

tion some four or five years ago which involved great interests, and that was the proper differential on grain originating, say, at Chicago, as a typical point, to Boston, New York, Philadelphia, Baltimore, and Newport News. What should be the adjustment of grain rates—the relation of grain rates from a common center to those different ports? That is a great question; but, as Commissioner Prouty said yesterday, somebody has to settle it, and the question is, shall the carriers be free to settle it just as they see fit, no matter what consequences to the communities or to individuals may result, or shall public authority intervene to some extent and, under proper restrictions, control in a degree that judgment?

Bear in mind another thing, gentlemen. It is not proposed that an order of the Commission made after this careful hearing shall be final. The bill provides that any carrier can go to court to get rid of it, and the court is required to stay it unless it finds that that is a just and reasonable and lawful order.

Therefore, before any rate can be changed under this Corliss bill there must be a determination of the Commission reached in the careful manner I have described, and there must be a decision by a court, or made at the instance of the carrier that that is a just and reasonable and lawful order. Now, is that too much?

The CHAIRMAN. That scarcely answers the question. I wanted your opinion as to how far this authority might be exercised in a given case. Has it ever occurred that the entire schedule of rates as filed by a company, a carrier, has been in their entirety assailed in any one proceeding before you?

Mr. KNAPP. That has occurred in numerous cases, Mr. Chairman, but only (I am very confident that I am correct) in those cases involving the long and short haul clause.

Mr. CHAIRMAN. In a case like that, where there was a sort of blanket charge covering the whole of a schedule, and the entirety of the business of a carrier, would it be competent in that kind of a case, in your judgment, under the authority proposed to be given by this bill, for the Commission to make out an entire new schedule of rates covering the whole of the business of that corporation so far as their compensation for service is concerned?

Mr. KNAPP. I am not perfectly sure that I apprehend. Let me see. It is true now, as I said, in cases which involve the long and short haul clause, as you gentlemen all know, in the territory south of the Ohio and Potomac rivers and in the territory west of the Missouri River, there is a very general system of making rates under which there is a lower rate to the distant terminal or the basing point than is applied to intermediate points.

The CHAIRMAN. Waiving that question of the long and short haul, and taking this subject as involved under that kind of inquiry or complaint, would you consider a general charge made by a citizen that involved all of the rates of a complete schedule of a railroad, covering its whole system, if they had made such a schedule as that, or would you require a specific statement of just the complaint that he wanted to make with regard to some particular charge? It would be in the nature of a general demurrer. Would you require him to be more specific?

Mr. KNAPP. So far as I now recall, Mr. Chairman, no complaint has ever challenged the entire schedules of a carrier except for discrimi-

nation, either under the long and short haul clause, which is the common type, or because of the widely different rates between two places, at about the same distance from a common center. In other words, in every instance where the entire schedule of rates has been challenged it has not been for inherent unreasonableness, but for its discriminating results, and the bill does not change the present law in that regard in any particular, and it does not change the fourth section.

I might say for your information that there is nothing left of the long and the short haul clause of the present law. The construction which it has received from the Supreme Court has deprived it of all vitality. No violation of the long and short haul rule ever occurs except because of competition; and the Supreme Court has held that competition, whether the competition of carriers or of markets, or what not, may constitute the dissimilarity of circumstances and conditions which justify the carrier in charging more for the short distance than for the long distance.

So as that fourth section has been construed, it might as well be dropped from the law. In my judgment we can do nothing under the fourth section to-day which we could not do under the third section. It is a discrimination between localities. The specific type of the discrimination, the higher charge for the shorter distance, which most people assumed was to be separately treated or specially treated by the fourth section, is unaffected by that section now in the way it has been construed.

(Thereupon, at 12 o'clock m., the committee took a recess until to-morrow, Thursday, April 24, at 10.30 o'clock a. m.)

THURSDAY, *April 24, 1902.*

The committee met at 10.30 a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Mr. Thurber has been here several days from New York, and if there be no objection we will interrupt the order to give the floor to him for ten minutes.

STATEMENT OF MR. FRANCIS B. THURBER.

MR. THURBER. Mr. Chairman and gentlemen, I appear before you as representing the United States Export Association, which is a union of American interests in 34 States, with membership in 34 States, that are interested in widening the markets for American wares, and our view of it, therefore, is not sectional. It is not that of any particular port or any particular market, and we are not opposed to the Corliss bill in all its features, but we think it is defective in some of them.

In so far as the bill strengthens the powers of the Interstate Commerce Commission for investigation and preventing of unjust discriminations, it is desirable, but we think that conferring the right, making the power, to the extent that the bill does is unwise. For instance, one section of the country may have the idea that a rate is unjustly discriminating against that section. At present we have that sentiment in New York. They feel that the differentials between the various Atlantic ports are unjust to New York, and there is a feeling on

the part of our local merchants that making lower rates for export is unjust to our local trade. Well, it is perfectly natural that they should feel that; but looking at it in its widest aspect, it seems to me that there should be an elasticity in the making of rates which would permit the placing of our surplus in foreign markets in competition with the products of other countries.

To-day the question of competition is a world-wide one. The field is the world. It is a competition of markets, of countries, of nations, while the popular idea of competition is competition between individuals or between individual lines of railroad. The question is so large that it is, of course, very difficult to any more than indicate to you gentlemen the thoughts that have come to me in my study of this question. I have been interested in the study of transportation questions for many years. I have been an advocate of the regulation of railroads. I stood with Mr. Reagan in advocating the enactment of the interstate-commerce law and in the prohibition of pooling. We felt at that time that the combination of railroads was likely to result in excessive rates of freight, and that the prohibition of pooling was necessary to obviate that, although we both appreciated that the object of the interstate-commerce bill was chiefly to prohibit discriminations.

It took ten years to convince Mr. Reagan and myself that we had done the very thing that had increased the evil of unjust discriminations, because prohibiting the same right of contract between carriers which all other individuals and corporations enjoyed, it left it open for an unscrupulous minority to all the while overreach a majority who desired to enforce uniform rates of freight, and it greatly increased the evil of unjust discrimination.

Now, one defect in the Corliss bill, as it seems to me, is that it does provide for agreements between railroads; it may not be pooling agreements, but for the maintenance of associations which are absolutely necessary in the practical operations of railroads to insure uniform and stable rates, which are the great thing to be desired; not that there may not be excessive rates, but that there should not be a power above the railroads to say what is a reasonable rate. And I do not share the fear which Commissioner Prouty expressed here so eloquently the other day, that the great combinations, the community of interest idea, which has progressed so far, is likely to result in excessive rates of freight.

Our products are now being carried a thousand miles to the seaboard for less than the railroads of other countries charge for carrying those products inland from their seaboard. On the average, the rates of freight in this country are less than half those of other principal countries, and a very interesting diagram was prepared by the Philadelphia Museum that gives a graphic illustration, by the different lengths of line, showing the comparative rates of freight in the principal countries during the year 1897. That was the latest that they had the rate of freight of all the various countries. That was so interesting that the United States Export Association reproduced it, and I have a sufficient number of copies here so that if any of the members of the committee here are interested in that they can take one. That gives the ton mile rate upon the entire traffic of the various countries.

Touching this question of whether there is a danger of too high rates as discussed by Commissioner Prouty, and the large increase which has been made in rates during the last three years, I have given

a good deal of study to that question, and while I think there is room for criticism as to the method, the indirect method, by which rates have been advanced through the changes in classification, I do not see that the rates have been raised to even as high an extent as the cost of transportation, of all materials that enter into transportation, including labor, has advanced; and while our railroads have been making large profits because of the prosperous condition of the country and the enormous increase in the volume of business, it is certain that there will come lean years as well as fat years, that it is impossible for carriers to reduce their fixed expenses in proportion as the volume of business decreases in the lean years, and hence it is only fair, I think, viewed from both the standpoint of the shipper and the carrier, that no narrow view, based upon a few years or two or three years' results, should govern our conclusions.

There is one point which is not generally appreciated, and that is that it is a surplus which demoralizes markets, causes shutdowns of factories, and generally makes hard times. And the great problem seems to me to be to get rid of our surplus, both of our fields and of our factories, and hence I think that any power conferred—that is conferred, for instance, upon the Interstate Commerce Commission—to make rates which would prevent the giving of lower rates for export trade than are given for our domestic transportation would be unwise and against the interest of the country as a whole, and I believe that the present power of the Interstate Commerce Commission, in its power to investigate and declare a rate unreasonable, leaving it to the courts to decide what is a reasonable rate, is safer for the general public interest than it would be to confer a more sweeping and arbitrary power.

One feature of the Corliss bill, which throws the burden of proof, so to speak, upon the railroads in an appeal to the courts, it seems to me is going too far. I think that the shipper and the carrier should have equal access to the courts, and that the usual rule that the burden of proof is on the plaintiff is perhaps as just to the shipper as it is to the carrier.

Now, it has been alleged that the court delays in arriving at decisions, which seems subversive of justice, and that is sometimes no doubt true; but I think that the able lawyers on this committee can devise some way of expediting the decision of cases that are brought before the courts so that it would not result in a denial of justice.

One very interesting feature of the power already possessed by the Interstate Commerce Commission is shown in recent injunctions which have been granted by the courts against the continuance of discriminating rates of freight, and I hope that that will be found to be a source at the command of the Interstate Commerce Commission which will result in the uniformity of rates. I think that those injunctions ought to be made against shippers who seek preferential rates as well as carriers who grant them, and indeed the initiative, the pressure, for discriminating rates usually comes from the shipper—the large shipper. There is no doubt that the small shipper is very much at a disadvantage as compared with the large shipper, and that that is an evil which ought to be remedied.

The vote of the small shipper had as much to do with conferring the franchise under which a common carrier operates as the vote of a large shipper, and there is a principle involved there of the right of the

citizen on the public highway which goes far to modify the rule of wholesale and retail that governs to an unlimited extent in private transactions.

The thought of the world-wide competition, and that we are not in danger of excessive rates of freight, is one which seems to me to be most important and worthy of your consideration, perhaps, to a greater extent than these other birds-eye view remarks that I have been putting before you.

I have put together on paper some figures as regards the decrease in the rates of freight and the increases up to the time when these statistics were available, and also some figures as to the relative cost of labor and materials, and I do not wish to trespass upon the time of the committee to read them, but with your permission I will file a copy of this with the stenographer, and it may go into the proceedings.

The CHAIRMAN. Very well.

Mr. THURBER. I thank you, gentlemen, for the consideration you have given me. I happen to have some other business here in connection with some of the measures which have been introduced by the boards of trade, and so I have been backward and forward two or three times, and it is very kind of you to give me this time, because I have to go back to New York this afternoon.

Mr. CORLISS. I would like to ask you a few questions.

Mr. THURBER. Certainly.

Mr. CORLISS. You represent an export association?

Mr. THURBER. Yes, sir.

Mr. CORLISS. Organized under the laws of the State of New York?

Mr. THURBER. Yes, sir.

Mr. CORLISS. With a capitalization of \$5,000,000?

Mr. THURBER. Yes, sir.

Mr. CORLISS. You manufacture no products?

Mr. THURBER. No, sir.

Mr. CORLISS. You buy and sell no goods?

Mr. THURBER. No, sir.

Mr. CORLISS. That is all.

Mr. THURBER. I wish, however, to add just a word there. The United States Export Association was incorporated at the suggestion of one of its members that it ought to be incorporated, so that there would be no liability of its members over the amount of their membership dues.

Mr. STEWART. How large is your membership?

Mr. THURBER. We have 230 at the present time.

Mr. STEWART. Representing how many States?

Mr. THURBER. Thirty-four States, and representing the largest shippers in the United States, without exception.

Mr. STEWART. You say your views have changed in these past ten years with reference to the powers that ought to be given to the Interstate Commerce Commission?

Mr. THURBER. Yes, sir.

Mr. STEWART. When you advocated these powers, you were then a shipper, were you not?

Mr. THURBER. Yes, sir; and a large one.

Mr. STEWART. And then your views in reference to the railroads, etc., were different from what they are now since you ceased to be a shipper?

Mr. THURBER. Well, yes, sir; I think so. But that change of views has been very largely the result of study. I used to think that the transportation question was quite a simple one, and that a very few provisions in the law would remedy the whole situation; but as I grew in experience I grew in knowledge, and the great complexity of it and the difficulty of reaching all the various problems involved became more apparent to me.

Mr. STEWART. Are you a salaried officer of this export association?

Mr. THURBER. Yes, sir.

Mr. STEWART. And your duties are simply to supervise legislation?

Mr. THURBER. No, sir; not by any means. The United States Export Association business is to furnish to our members information.

Mr. STEWART. Information?

Mr. THURBER. For instance, credit information as regards the sending of foreign buyers.

Mr. STEWART. You are frequently at Albany, before the legislature of New York?

Mr. THURBER. I have been once at Albany.

Mr. STEWART. Representing this association?

Mr. THURBER. Yes, sir.

Mr. STEWART. You have also been in other States; you have been in New Jersey?

Mr. THURBER. No, sir.

Mr. STEWART. You have never been at Trenton?

Mr. THURBER. No, sir; never to the legislature at Trenton.

Mr. ADAMSON. It is purely an educational institution, is it?

Mr. THURBER. No, sir; it is purely a business institution.

Mr. ADAMSON. As a matter of fact, you never buy or sell anything. What do you do?

Mr. CORLISS. They disseminate information.

Mr. THURBER. We have 300 correspondents in foreign countries through whom we acquire credit information which we transmit to our members. We furnish our members with freight information, and take charge of their shipments when they are shipped through New York. We attend to their insurance and banking.

Mr. ADAMSON. Have you any expenses except your salary and your traveling expenses?

Mr. THURBER. Oh, yes, sir.

Mr. STEWART. Have you an office?

Mr. THURBER. We have.

Mr. STEWART. Where?

Mr. THURBER. No. 30 Broadway, New York. We employ 20 clerks.

Mr. STEWART. Is that the Thurber Building?

Mr. THURBER. No, sir; it is the Gherkin Building.

Mr. ADAMSON. If you have no capital stock and no business, I do not see how your members could be liable—

Mr. STEWART. Where do you get your money to pay your clerks?

Mr. THURBER. We have \$100 a year from each member, for which they get this service. We publish also a bulletin for foreign circulation in four languages, which circulates to 20,000 foreign buyers in all parts of the world.

Mr. STEWART. What do you charge for that service?

Mr. THURBER. Nothing at all.

Mr. STEWART. You do not charge anything to the foreign correspondents?

Mr. THURBER. No, sir; the foreign correspondents furnish us information, and we, in turn, furnish our foreign correspondents with this information they may require in the United States. We have, you might say, a foreign mercantile agency on a small scale. We have accumulated information in our records so that we can answer about one-half of the credit inquiries we get from our books alone. The other answers to inquiries we get by correspondence or by cabling, as the case may be, and that is an important department.

Mr. STEWART. Do you furnish secret information of the standing of merchants?

Mr. THURBER. Yes, sir; that is a part of our business.

Mr. STEWART. You are paid for that?

Mr. THURBER. No, sir; that is a part of the privileges of our membership.

Mr. STEWART. Outside of your clerks do you have a system of espionage by detectives, or how do you get at the standing of a firm?

Mr. THURBER. You are probably familiar with the system of mercantile agents.

Mr. STEWART. You mean Bradstreet's?

Mr. THURBER. Yes, sir.

Mr. STEWART. Yes.

Mr. THURBER. It is on that principle.

Mr. STEWART. Do you have agents in those States—

Mr. THURBER. We have 310 or 315 foreign correspondents in all parts of the world. You see the credit information which our members require is on the standing of foreign buyers, and in many cases our correspondents in other countries want information as to the standing of people in this country. We make reciprocal arrangements to interchange that information.

Mr. STEWART. You have annual meetings?

Mr. THURBER. We have had monthly meetings, usually, and we have had two annual meetings only.

Mr. STEWART. What is the average attendance at those meetings?

Mr. THURBER. You mean at the monthly meetings or the annual meetings?

Mr. STEWART. At the annual meetings.

Mr. ADAMSON. At both.

Mr. THURBER. Sometimes at the monthly meetings it is only the board of directors.

Mr. STEWART. How do you arrive at the views upon this particular question which you have been expressing of the members distributed through thirty States?

Mr. THURBER. We are in constant communication—

Mr. STEWART. Can you produce any correspondence with your membership throughout these 34 States which gives you a standing before this committee as representing them?

Mr. THURBER. I can.

Mr. STEWART. Have you that correspondence with you?

Mr. THURBER. No.

Mr. STEWART. Can you produce that correspondence?

Mr. THURBER. Yes, sir; and if you wish an expression of the individual views of the members it will be a very easy thing to get it.

Mr. STEWART. You say you have them in your archives?

Mr. THURBER. We have in this respect, that we are in constant contact and communication with them, and I know their views, and I am voicing their interests.

Mr. STEWART. Will you produce any minutes of your association authorizing you to appear here and represent them before this committee?

Mr. THURBER. Yes, sir.

Mr. STEWART. I wish you would do so.

Mr. THURBER. I will.

Mr. CORLISS. Mr. Thurber has said that the members of this corporation thought it necessary to incorporate, that it was the object of the corporation to avoid liability——

Mr. THURBER. The object of the incorporation; yes, sir.

Mr. CORLISS. Is the business such as to make a man liable——

Mr. THURBER. Any voluntary association is subject to the unlimited liability of its members unless it is limited by an incorporation.

Mr. CORLISS. You are, then, doing something that might create liability if it was done by an individual, and that you seek to remedy by the organization of this corporation?

Mr. THURBER. Yes, sir. Suppose that I, as president of the association, were to go and make contracts binding the association, and that it was not incorporated with a limited liability, every member would be individually liable.

Mr. MANN. The liabilities being just.

Mr. THURBER. A man making a contract with you would be limited to \$500 in his recovery. The liability of the members is limited to their membership dues.

Mr. STEWART. Under what laws are you incorporated?

Mr. THURBER. The laws of New York.

Mr. STEWART. Under what particular incorporation law?

Mr. THURBER. Our general incorporation law.

Mr. STEWART. What powers have you to do business?

Mr. THURBER. General business powers, not the banking power.

Mr. STEWART. Have you resolutions and by-laws?

Mr. THURBER. Yes, sir; a constitution and by-laws.

Mr. MANN. Without an incorporation your members would be only liable for just claims?

Mr. THURBER. Yes, sir.

Mr. MANN. But under your incorporation you are not liable for just claims——

Mr. THURBER. You are now speaking of the association; but taking the individual membership, they are liable to the extent of their membership dues, which is \$100 a year.

Mr. MANN. Practically nobody who had a just claim against you could recover it?

Mr. THURBER. We do not have any liabilities.

Mr. MANN. You might have.

Mr. THURBER. Our membership dues pay our liabilities.

**ADDITIONAL STATEMENT OF F. B. THURBER, PRESIDENT OF
THE UNITED STATES EXPORT ASSOCIATION.**

Mr. Chairman and gentlemen of the committee, I appear before you in behalf of the United States Export Association, of which I am president, and which is a union of American interests for the purpose of widening the markets for American products, and whose membership comprises leading houses in the principal lines of industry situated in thirty-four States. It does not, therefore, represent any special interest, or any special port or section, but the interests of the country as a whole.

I have been studying the Corliss bill (H. R. 8337), with the result of concluding that while much in it is good, in its present form it is inexpedient, for the reason that it proposes the wrong remedy for the disease. Section 2 proposes to confer the rate-making power upon the Interstate Commerce Commission when the rate-making power has nothing whatever to do with the prevention of unjust discriminations. In so far as this bill strengthens the hands of the Interstate Commerce Commission to investigate and expose unjust discriminations it is likely to be beneficial, but in so far as it confers upon the Commission the power to make rates and classifications it is likely to be injurious alike to shippers and carriers, because, in the first place, it will prevent the passage of any bill amending the interstate-commerce law, and if the proposed bill could be passed, conferring the rate-making power on the Interstate Commerce Commission, it would not prevent the evasions of it which constitute unjust discriminations.

The only thing which will prevent this is to give carriers the same right of contract which is enjoyed by all other corporations and individuals, the right to legally enforce their agreements upon each other, a right which is denied to carriers at the present time by the prohibition of pooling in the interstate-commerce law, and the interpretation which has been given by the Supreme Court of the United States to the antitrust act in the joint traffic and trans-Missouri decisions, pronouncing all associations for the maintenance of rates illegal, the direct result of which has been to promote the "community of interest" consolidations, a process which has already progressed so far that close observers are in doubt as to whether or not the master spirits in these consolidations would not prefer to see the present conditions of chaos maintained in order that these consolidations may be fostered. As chairman of the committee on railroad transportation of the New York Board of Trade and Transportation, and of the National Board of Trade, as well as member of the committee on internal trade of the New York Chamber of Commerce, I have been a close student of this question for 25 years from a shipper's point of view. I have had perhaps as much to do with legislation regulating the relations of shippers and carriers as any other individual. I advocated the New York railroad commission and the enactment of the interstate-commerce law, and cooperated with Mr. Reagan, the father of the bill, in prohibiting pooling. We feared that with the right to pool carriers might charge the public exorbitant rates for freight, but the experience of fifteen years has shown that there is no danger of high rates in this country; that the chief danger is in unjust discriminations, which always operate to the benefit of the few instead of the many; to the advantage of the large instead of the small shipper.

So far as the rate-making power is concerned, it was not intended by Congress to confer that power on the Interstate Commerce Commission. This is shown by the following extracts from the debates in Congress while the interstate-commerce bill was pending.

In the House of Representatives, on December 8, 1884, Mr. Findlay said:

It is perfectly legitimate to prescribe that a rate shall be reasonable and then leave it to the courts to determine what is and what is not reasonable, but to declare in advance, not merely the principle by which the fixing of the rate shall be governed, but to prescribe the rate itself by referring it to a fixed standard and apply the rule to the complicated system of interstate transportation, with all of its vast ramifications and subtle competitions, is the exercise of a power which, if it be held legislative in its nature, certainly ought to be sparingly and cautiously used. The bill of the committee keeps this distinction full in view in all of its provisions, and is consistent and symmetrical throughout; but the Reagan substitute, as I have shown, is not only not distinguished by this unity and integrity of purpose, but is complex and contradictory in some of its essential features.

Mr. REAGAN. But it would be understood from his reasoning that my bill not only requires rates to be reasonable, but fixes the rates. There is not a word in the bill having that effect.

On January 7, 1885, Mr. Reagan said:

One of the greatest troubles I have had, even with the friends of legislation in this direction, has been to get them to understand that this is not a bill to regulate freight rates; that it does not undertake to prescribe rates for the transportation of freight. I know the difficulties which would attend any measure attempting to prescribe rates of freight. I am persuaded that no law fixing rates of freight could be made to work with justice either to the railroads or to the public, and I have intended from the beginning to avoid that difficulty.

The difficulty with gentlemen in considering the bill is that they can not keep out of their minds the arguments of the railroad lawyers and lobbyists who are continually harping upon it, that this bill establishes arbitrary rates of freight. It does no such thing. It carefully guards against that, simply intending to prevent the most manifest abuse against the public, and control the monopoly powers of these corporations.

In the Senate, May 6, 1886:

Mr. KENNA. What constitutes a reasonable rate is precisely the thing which the people of this country are unwilling to leave to the arbitrary discretion of the Railroad Commission.

As regards reasonable rates as a whole the people of the United States have no cause to complain. They have steadily declined until even with the recent advance they are less than half those of other principal nations. Our railroads carry our products 1,000 miles to our seaboard for less than those of other countries charge for carrying the same products 200 miles inland from their seaboard. The steady decline in rates is illustrated by the following figures:

The average rate for 1 ton of freight 1 mile since 1892 has been as follows:

| | Mills. |
|------------|--------|
| 1900 | 7.29 |
| 1899 | 7.24 |
| 1898 | 7.53 |
| 1897 | 7.98 |
| 1896 | 8.06 |
| 1895 | 8.39 |
| 1894 | 8.00 |
| 1893 | 8.78 |
| 1892 | 8.98 |


The rate was probably still higher in 1901; but everything else has risen.

These results have been largely attained by subsidies in land, money, and mail pay, and giving freedom of action in combining and consolidating, thereby attaining the highest economies of operation. If we had pursued the same course on the sea as we have on land we would now have a merchant marine which would give us permanent low rates on the sea and enable us to put our heavy products of the field, forest, mine, and factory into all the markets of the earth, and our finished products would closely follow.

I am unwilling to take any steps that will hamper such development, for in this age of steam, electricity, and machinery "the field is the world" in commerce as with religion; and with our command of these forces, brought to bear upon our great natural resources, with intelligent and liberal statesmanship, we will lead the world in the march for commercial supremacy.

It is alleged by some that rates for railroad transportation during the last two years have been unduly increased by means of changes in classification, rules, etc. While opinions may differ as to the methods by which rates have been increased, there can be no doubt but that railroads were obliged to advance their rates on account of the large advance in the price of labor and materials. What these have been is perhaps indicated by the following figures: The price of steel rails in 1898 was \$19 per ton; the present price is \$28. The price of yellow pine lumber, used in the construction of freight cars, in 1898 was \$15.75 per 1,000 feet; the present price is \$20. The price of axles in 1898 was 2 cents per pound; the present price is 3 cents. Car wheels in 1898 were \$6.25; the present price is \$7.25. Bar iron in 1898 was \$1.10 per 100 pounds; the present price is \$1.60 per 100 pounds. Steel required in the construction of locomotives in 1898 was \$1.50 per 100 pounds; the present price is \$2.25 per 100 pounds. Railroad labor upon the average was advanced 15 per cent during the last two years, while the ton-mile rate of freight on all the railroads of the United States has not been advanced more than 8 to 10 per cent. Of course, the increased volume of business has yielded increased profit as a whole, but much of it has gone into permanent improvements and increased equipment, which when the lean years come will be unremunerative. It will be conceded by fair-minded men that our railroads are entitled to share in the general prosperity of the country, in which they are so large a factor. Both shippers and carriers are apt to see only their own side of the question, and no just conclusion can be arrived at which does not take into consideration both sides.

I believe that a majority of both shippers and carriers are honestly desirous of doing what is fair and right in their relations with each other, but there is an unscrupulous minority in both who are constantly overreaching to get an unfair advantage of the other. On a single railroad in the month of November last over 50,000 instances of fraud on the part of shippers in billing goods were detected by the inspection bureau of that company in order to get a lower classification than the goods were entitled to, and the chief inspector estimated that 97 per cent of these were willful frauds, and only 3 per cent were attributable to honest error on the part of shippers. The system of organized fraud on the part of ticket scalpers is familiar to all students of transportation questions. There was probably never a head of stock killed or an injury to property that the claim for damages was



not excessive. In view of such facts as these we can not wonder that railroad officials are just a little skeptical of the human nature embodied in the average shipper or citizen.

In conclusion, Mr. Chairman and gentlemen, I would call attention to the fact that the most successful railroad commissions have been those of Massachusetts and New York, neither of which have had the power to prescribe rates, but which have had full powers to investigate and bring abuses to the attention of the courts and public opinion. These have been found sufficient to remedy the evils which existed in their jurisdictions, and I hope that you will not approve this bill unless amended so as to preserve the right alike of carriers and shippers to appeals to the courts without prejudice, and to provide the right to make reasonable pooling and other agreements between carriers, for the maintenance of uniform and stable rates, subject to the approval of the Interstate Commerce Commission. In this way only can the evil of unjust discrimination be eliminated.

From my study of this question, I have become convinced that there is no danger of even the largest combinations imposing upon the public unreasonable rates of freight. It will not eliminate competition, for this principle is all-prevailing. The popular conception of competition is competition between individual shippers and individual railroad lines, but the larger working of the principle is embodied in the competition of markets—the competition of towns, cities, sections, and countries. If all the railroads of the United States were combined into a single corporation or the Government itself, this force would still be active. Every road would be developing the industries along its line, and these industries would compete with similar industries along other lines, even though ownership of all the lines was unified. Another factor in the field of competition is water transportation, embodied in our lakes, rivers, canals, and the ocean, which surrounds our country on all sides. There is no fear whatever of excessive rates for transportation in this country. The only fear is as to unjust discriminations, and these can be remedied by full powers of investigation, by supervision of railroad commissions with power on the part of both shippers and carriers to appeal to the courts, and giving carriers the same right of contract which all other individuals and corporations enjoy except railroad companies, which are debarred from this right by the prohibition of pooling in the interstate-commerce act and the interpretation of the Sherman antitrust act given by the Supreme Court of the United States in the Trans-Missouri and Joint Traffic Association cases.

I am familiar with the agitation which is seeking to confer increased powers upon the Interstate Commerce Commission embodied in the Corliss bill (H. R. 8337) and the Nelson bill (S. 3575). It began by a bankrupt line, leading from Kansas City to Gulf ports, making abnormally low rates on export wheat. To meet this the east and west trunk lines made equally low rates on wheat but not on flour, because they were not exposed to the same competition in carrying the products of the widely-scattered mills of the Middle West to the seaboard, and hence export flour was charged a much higher rate than export wheat. This great discrimination against American millers in favor of European millers led to an agitation for lower rates on flour. Members of the Interstate Commerce Commission endeavored to utilize this well-founded dissatisfaction to get the rate-making power. A preliminary meeting was held at Chicago, followed by a

convention of shippers representing various interests, held at St. Louis, November 20, 1900, at which the Cullom bill (S. 1439) was indorsed, which was substantially the foundation for the present Corliss and Nelson bills. There is a diversity of opinion, both among shippers and carriers, as to the necessity for any legislation in the direction of increasing the powers of the Interstate Commerce Commission.

Spurred by some criticisms to the effect that the Commission was not using the powers at its disposal, it has recently invoked the power of the courts to prohibit unjust discriminations by injunctions, and it is too soon yet to say just what effect the injunctions which have been granted will ultimately have, but thus far they have been beneficial, and it seems to me that if made applicable to shippers as well as carriers the probability of their being a permanent remedy for the evils of unjust discrimination would be increased. Railroads do not willingly make unjust discriminations. The initiative is always with the shippers, and railroad agents yield to pressure brought to bear upon them by shippers controlling large amounts of business. In closing, Mr. Chairman and gentlemen of the committee, I wish to repeat that I believe that in the face of the basic fact that the present system of elasticity in American railroad management has resulted in giving our great country lower rates by one-half for the transportation of freight than any other principal nation enjoys, and that this affords an outlet to the markets of the world for the great volume of our surplus products, we should go slow in imposing cast-iron rules and regulations in an intricate and complex business like that of transportation. It may seem unjust to a merchant on our seaboard that he should be charged a higher rate in proportion than the same freight destined for export, or that freight originating on the seaboard should be charged a higher rate than freight from foreign countries destined for an interior city in our own country pays.

It may seem unjust to a local shipper doing business within his own State that his local rate should be so much higher than interstate rates, but if a producer or manufacturer can get a contract at a distant point through the means of a reduced rate of freight, the carrier, having perhaps empty cars going in that direction, can afford a concession rather than let its rolling stock go empty. Labor and capital are both benefited by a reasonable elasticity which permits of such concessions being made, and, after all, it comes down to a question of what is reasonable, and of this there is perhaps no better authority than the courts, notwithstanding that delays sometimes may result in a substantial denial of justice. Such instances are the exception rather than the rule, however, and you gentlemen, who represent all sections of our great country, after hearing all sides, must make up your minds as to what is reasonable, but I hope, if there is any amendment to the interstate-commerce law, that it will be in the direction of strengthening the provisions for investigation and publicity, conferring the right of contract upon carriers, subject to the approval of the Interstate Commerce Commission, and giving equal right of appeal to the courts of both shippers and carriers, but not conferring the authority upon the Commission to make rates or classifications.

**STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN OF THE
UNITED STATES INTERSTATE COMMERCE COMMISSION—
Continued.**

Mr. KNAPP. Mr. Chairman and gentlemen, before proceeding with my argument I desire to make a word of comment upon some of the observations made by my esteemed friend, Mr. Thurber.

Inferences drawn from the average rate per ton per mile on all traffic are liable to be very misleading. It is frequently said that railway rates in the United States are not half what they are in England. That is true only when you compare the average rate per ton per mile on all traffic of the one country with the same average in the other country. Allow me briefly to explain to you how the average rate per ton per mile may be greatly reduced without any change at all in the rates as to any particular shipment.

Now the relative amount of low-grade freight carried in this country, like ore, coal, etc., has enormously increased in the last fifteen years. If in one year you carry a thousand tons of first-grade freight at \$1, and another thousand tons of sixth-class freight at 20 cents, the average rate will be 60 cents. But if in the next year you carry a thousand tons of first-class freight at a dollar, and 10,000 tons of sixth class at 20 cents, the average rate on all the traffic will be more than cut in two without any change in the rates themselves. Now the enormous reduction in the average rate per ton per mile in this country has come from three principal causes. First and mainly, the enormous increase in the relative amount, the relative tonnage, of these low-grade articles which are carried at a low price; second, there has been from the beginning a difference between carload and less than carload rates, and in the last fifteen years there has been an enormous increase of the relative proportion of the traffic carried in carloads and at carload rates, so that without any change in the rates themselves, without reducing the cost of shipping a carload or 100 pounds, you may have an average reduction in the average rate per ton per mile on all traffic. There have been reductions in grain to some extent, in iron articles, and in other commodities, which I will not stop to mention, which have entered into the reduction of the average.

When you speak of English rates, you must remember that their rates include cartage at both ends. An English carrier goes to the warehouse and gets the stuff and transports it to the railroad, and when it arrives at its destination he gets it and transports it to the place of the customer. Of course, that enters into the rate. Now, I ask Mr. Thurber to bear in mind that England is a small country, and that it is seldom that traffic moves more than 500 miles there, and taking into account the cartage, I ask him to compare what it costs a man in New York to deliver dry goods, boots and shoes, or merchandise of any class, the articles in which the great mass of people are interested—how much it costs him to effect the movement from his store to the store of the customer as compared to the cost of moving the same articles the same distance in England, and I think that he will be very much surprised. It is not so very much lower than it is there.

Mr. THURBER. How is it with other countries?

Mr. KNAPP. There is no country that is as low as the United States. Now, there is another thing that is to be taken into account. It is a well-known thing in railway transportation, and water transportation,

too, for that matter, that the cost per unit of traffic moved diminishes with the distance it is carried. You do not get twice as much for carrying a carload 1,000 miles as for carrying it 500 miles. Our traffic is carried long distances, because we have a great big country, and much of it moves 2,000 and even 3,000 miles, while in England there is but little movement that exceeds 500 miles, so that my suggestion is that you compare the ordinary cost of moving the ordinary merchandise, the articles in which the mass of the people are interested, the same distance for the same service, and you will find that it is not anything like twice as great in England as it is in the United States. The truth is, gentlemen, that in the official territory, that is the territory north of the Ohio and the Potomac rivers and east of the Mississippi, the most populous and wealthy part of the United States, producing the greatest volume of traffic, the basis in making rates in all that territory is the Chicago rate. Places nearer New York take a percentage under the Chicago rates, and places farther than Chicago take a percentage over the Chicago rate, so that when the basis of New York and Chicago is reduced there is a corresponding reduction in all that territory.

Now, the class rates in all that territory on the six classes are just as high to-day as they were fifteen years ago, and in numerous instances the actual rates applied have been increased by the fact that articles have been advanced in their classifications to take a higher rate. Gentlemen, I did not mean to go into that. I just wanted to call your attention, however, to the fact that we may be very much misled when our attention is called to the extremely low average rate per ton per mile on all traffic. Why, the Chesapeake and Ohio Railroad shows the lowest average rate per ton per mile on all its traffic of any railroad in the United States, and yet everyone knows that the actual rates applied to merchandise, applied to the articles that the people living along the line of that road are interested in, are very much higher than they are along the New York Central or along the Pennsylvania Railroad, simply because 90 per cent of the traffic of the Chesapeake and Ohio is coal and ore, and that is of course carried from the summit where it is produced both ways to tide water, and of course that results in a very low average rate per ton per mile on all articles on that road, and yet it costs more to haul a carload of boots and shoes or clothing or any of the articles of domestic use over that road than it does over the New York Central.

In order that I may not forget it, I want to make another observation now. If I understand the measures which are pending before this committee, and I have endeavored to examine them with care, there is not a single one of them which proposes to change the present state of the law in respect to allowing a rate on exports lower than on domestic traffic; not a syllable.

Mr. THURBER. It proposes to give the power to the Commission, which they do not now have, and that might enable the Commission to decide that the contention of our local New York merchants, that they should pay no higher than the proportionate rate on export goods—than the people who export—might be sustained.

Mr. KNAPP. Let me see. I might as well strike out that question right here now. I want you to bear this in mind, that this Commission, under the Corliss bill even, can make no order except an order justified by the sworn testimony before it; and if, in a proceeding

where all parties have an opportunity to be heard, the facts are produced and the testimony is presented which warrants and justifies a conclusion that that relation between domestic and export rates is wrong, then it ought to be changed. Now, I am not saying for a moment, gentlemen, that domestic traffic should always be carried at the same rate as export traffic. I think conditions arise in this country, have arisen, and are likely to arise again, when it is an economic advantage, to say nothing about a commercial benefit to the people of this country, to permit these surplus products to be carried abroad at rates for the land carriage to the seaport which are less than the rail carriers should be obliged to accept on domestic transportation.

Mr. ADAMSON. An instance was cited the other day where a shipper had billed on an export bill of lading, and then had stopped cotton, I believe it was, in New York, thus enabling him to sell cotton cheaper there. You would not permit any such thing as that, I suppose?

Mr. KNAPP. I do not think that such a practice as that can find a defender or an apologist in the United States. I think to allow such a practice as that is disgraceful.

Mr. ADAMSON. If you bill on a bill of lading it should be in good faith?

Mr. KNAPP. Certainly; in good faith. Now, there are some other remarks made by Mr. Thurber which I prefer to comment upon in their proper connection as I proceed.

Gentlemen, I have already said all I care to say respecting those proposed amendments to the law which aim to give greater efficiency to the criminal remedies provided for its enforcement. My position is simply this: A right to the common highway, the right to use it on equal terms with everybody else, is a right that existed long before any written constitutions were adopted. That is a right founded in the very constitution of human society. It belongs to that class of rights which the Declaration of Independence described as inalienable; and that right is exactly the same, gentlemen, whether the highway is made of dirt or of steel. And I do not for one moment assent to any suggestion that laws should encourage or permit a public service to be performed for one man cheaper than it is for another; and speaking from my observation, and such crude reflections as have resulted—

Mr. ADAMSON. I do not think anybody has made such a suggestion as that.

Mr. KNAPP. Some questions were asked the other day on that line.

Mr. ADAMSON. Those questions were on an entirely different position.

Mr. KNAPP. That you might allow shippers to get a secret and preferential rate if they could.

Mr. COOMBS. Who made those statements?

Mr. KNAPP. They were implied in some questions which were asked.

Mr. COOMBS. I asked some questions in regard to that, but I desire to say that I did not intend to imply anything by those questions. I thought I had a right to ask them to get all the light that I could.

Mr. ADAMSON. Nobody has ever disputed your presumption as to the right of the Government to control the highways. I asked you some questions about the right of the Federal Government to regulate the commerce between the States, and I could not understand your discrimination between regulating different kinds of commerce, private as well as public.

Mr. KNAPP. I venture to say that I said that the best answer I could make was to refer you to the Supreme Court of the United States.

Mr. ADAMSON. Referring me to the Supreme Court does not answer my question.

Mr. KNAPP. It would be idle for me to make an answer inconsistent with the law of the land laid down by the highest judicial authority.

Mr. ADAMSON. I did not ask you about law at all. I simply asked you where you claimed to get your authority.

Mr. KNAPP. Of course, the authority to make any provision in the line of these bills is found in the commerce law of the Constitution.

Mr. ADAMSON. We are legislating every day about private commerce as well as public—private tradesmen and individuals engaged in interstate commerce.

Mr. KNAPP. So far as the subject of legislation is interstate commerce there is no question about the right to legislate.

Mr. ADAMSON. That has nothing to do with it at all.

Mr. KNAPP. The question is whether this is interstate commerce or not.

Mr. ADAMSON. You touch no corporation except in interstate commerce, no railroad except in interstate commerce; so there is no discrimination in your authority at all as to whether it is a corporation, a public carrier, or a private citizen, or who it is, so long as he or it is engaged in interstate commerce.

Mr. KNAPP. So long as it is interstate commerce it does not matter whether it is an individual, or a corporation, or a partnership, of course.

Now, not to take too much time, I feel that I am abusing your patience, and I can only say that I regard it not only as an act of justice, but of probably great value, to so change the tenth section as to make the corporation carrier, and I do not know of anyone who makes a serious objection, or any objection at all, to that proposition. And I say that if the shipper is to be made liable at all, then it should be under circumstances and a rule of law which makes it practical to bring the shipper to justice when he violates it. If, in your wisdom, you think this law will be more efficiently enforced by leaving the shipper out altogether and putting the penalties solely on the carrier, I am not disposed to argue against that proposition.

The CHAIRMAN. But your judgment would be against that?

Mr. KNAPP. It would be against it, Mr. Chairman. While I can see that as a matter of practical administration there would be advantages in having the shipper innocent, so that he could be called as a witness and he could be required to testify without pleading any constitutional privilege, because he is not himself an offender, still, after all, gentlemen, after all, I must express my honest conviction to be that the shipper ought to be liable as well as the carrier, first, because I think that is necessary to satisfy the fair-minded sense of justice.

The CHAIRMAN. In cases where he would be liable, you think there should be an exemption from punishment when he is called upon to testify, so as to compel him to testify?

Mr. KNAPP. Yes, sir; that is provided so now. You do not need to legislate on that subject. It is no longer, under existing conditions, the occasional, the infrequent shipper, who gets a rebate. It takes a very powerful shipper or combination of shippers to get a preferential rate. Therefore, when these secret arrangements are made, when

these private concessions actually occur, they occur under such circumstances and in favor of such men as to indicate a degree of moral turpitude on the part of the shipper fully equal to that of the carrier. They are under equal moral responsibility, and they are certainly equally deserving of the opprobrium which attaches to the violation of the law and to the punishment which results from that violation.

Now, just a few moments on the other question. Let us see exactly where we are to-day. Under the law as it stands the Commission has full authority to receive complaints. It may serve those complaints upon the carrier complained of and require it to answer. The law needs no alteration in that regard. The jurisdiction of the subject-matter is as broad and ample as the case requires. And the important question right here is this, it is in very narrow compass, and very easily stated, and it is a question which appeals to you with far greater gravity than it does to me. It is just this: When a formal complaint is made in the manner which the law now provides, that a given rate is excessive, or that its enforcement upon everybody effects a discrimination against one locality and in favor of another, or against one and in favor of another, and the carrier complained of answers that allegation, and the Commission then, proceeding with all the formality of a judicial inquiry, takes all the testimony which either side has to offer bearing on that question, what order, justified by that disclosure of sworn facts, what order shall the Commission be authorized to make?

That is all there is of it. At present the Commission can make simply an order, if the facts warrant, condemning the rate relation complained of, and requiring the carrier to cease and desist from continuing that rate, or rate relation, and that is all the order the Commission can make. I am speaking now, bear in mind, simply of the authority of the Commission.

Now, gentlemen, if you are content to leave the Commission with only that degree of authority, the discussion ends at this point.

Mr. CORLISS. It is not binding on the carrier, after the order is made?

Mr. KNAPP. No, sir; that is another question. The question now is only in such a case as this, bear in mind; the jurisdiction to make an order is dependent upon the jurisdictional facts which are contemplated by the measure: There must be a complaint, there must be an answer, there must be full hearing, and the order can be only such as can be justified by those facts. Now, what order shall the Commission have authority to make? That is all.

Mr. Thurber spoke about an arbitrary order. The Commission can make no arbitrary order, it can simply decide what the truth is and what ought to be done in view of the state of facts actually disclosed. Now, if you are satisfied—if you think under existing conditions, with practically no railway competition, that the authority of the Commission shall be limited to a mere condemnation of the thing complained of, and that it shall have no authority to say what thing shall be done in the future in place of the one condemned, then the question is ended. The responsibility is upon you. The country perfectly understands what the Commission can do and what it can not do.

If you do not want it to do any more than it can do now, then the law should not be changed in this regard.

Mr. DAVIS. Have there been numerous instances in which the railroads have declined to make future rates upon your findings since the

Supreme Court decision—where they have ignored findings or decisions, or whatever they may be called?

Mr. KNAPP. Oh, yes, sir. "Numerous," of course, is an uncertain term; but there are frequent instances of that kind.

Mr. DAVIS. Have there been many instances in which the railroads have fixed their rates for the future on what you have found to be just rates?

Mr. KNAPP. Some instances of that kind. As I have already explained, for ten years, or until the Supreme Court decided otherwise, the Commission acted upon the theory that in such a case it could name the thing to be done in the future. And it was not until January, 1897, or perhaps later, that the Supreme Court of the United States decided that, under the law as it now stands, the Commission had no authority to do that.

Since that interpretation has been made, and under circumstances which completely cover the question, the Commission, of course, has made no order except an order to cease and desist from the thing complained of.

The CHAIRMAN. Has the Commission made any recommendations accompanying those orders?

Mr. KNAPP. Yes, sir; I was about to say that. The Commission, without any authority to do so in the statute, have undertaken in such cases to express their judgment as to the thing which the carrier ought to do. But, of course, the order that it makes goes no further than to—

The CHAIRMAN. What is the history of the matter with reference to obedience to that suggestion?

Mr. KNAPP. It is exactly what happens, and what will happen. In several cases, decided since that time, the carriers have, with reasonable promptness, made changes in their tariffs so as to make them conform to the recommendations of the Commission. In other cases they have simply ignored the order and done nothing.

Of course you gentlemen understand that in the present state of the law, and the authority of the Commission merely such as I have described, the carrier could effect a technical compliance with that order by making only a nominal change in the rate under consideration, and then the whole thing would come to naught.

Mr. MANN. Under the present law, you have authority to order them to cease and desist from charging such a rate. That is effective for a future offense?

Mr. KNAPP. Yes, sir; we assume that it is.

Mr. MANN. I say assume under the present law—

Mr. KNAPP. I do not doubt it.

Mr. MANN. What has been the fact where you have made an order of that kind; what has the railroad company actually done?

Mr. KNAPP. Well, I say, in all such cases, we have included in the report of the case a recommendation; that is, unless we have found for the carrier, as often happens; that is, not sustained the complaint. And in every case the carriers have either adopted the recommendation and changed their tariff accordingly or they have done nothing.

Mr. MANN. You mean they have failed to carry out your order and to cease and desist?

Mr. KNAPP. Yes, sir.

Mr. MANN. You have a power to file a proceeding in court to compel them to obey that order?

Mr. KNAPP. Yes, sir.

Mr. MANN. Have you done that?

Mr. KNAPP. Yes, sir; we have several cases in court now.

Mr. MANN. Some of those cases have gone into court and are now pending; have any of them been disposed of?

Mr. KNAPP. No case, I think, has been decided.

Mr. MANN. What I wanted to get at is whether, in fact, the railroad companies have adopted this policy, which of course they could do; if, for instance, you decide that the rate of one dollar is reasonable, and you order them to cease and desist from charging a dollar in the future, I want to know whether they thereupon obey that order and the next day make a rate of 99½ cents.

Mr. KNAPP. No, Mr. Mann; no railroad would be as stupid as that.

Mr. MANN. You said they could—

Mr. KNAPP. Yes, sir; they could do that.

Mr. MANN. I want to know whether they do.

Mr. KNAPP. No, sir; let me explain to you why.

Mr. MANN. That is a very practical matter, and one of considerable interest.

Mr. KNAPP. Surely a very practical matter. Now, of course, the Commission can not enforce its own order. We have been talking about the order that the Commission can make. The effect of that order when it is made, how it shall be enforced, is another question, but under the existing law, as you doubtless understand, the carrier is under no legal compulsion to take any action when the order of the commission passes against it. It can wait, and does wait, until in accordance with the proceedings or procedure under certain laws, a bill is filed by the circuit court to enforce the order.

Take a concrete case. Suppose that a board of trade representing a community complains of a rate, which is \$1, and the complaint is served upon the carrier, and the complaint is heard.

The Commission reaches a conclusion that a dollar rate is unreasonably high, and thereby violates the first section of the law, which requires that rates shall be just and reasonable. It therefore makes an order that the carrier shall cease and desist from charging a dollar. That is all the order to make. Now, of course, if the carrier is disposed to make some concession or to adopt the recommendation which the Commission may have made in its report it does that. If it is disposed to adhere to its position and defend this rate, of course it does nothing. And the reason why the carrier will not make a nominal change in the rate in order to technically comply with the order of the Commission is simply this: The carrier will wait until the bill is filed to enforce the order, which is simply an order to cease and desist, and the carrier will then try the case out in the circuit court, and then it may appeal to the circuit court of appeals, and then to the Supreme Court of the United States.

And if finally the court of last resort sustains the decision of the Commission, which was simply to cease and desist from charging a dollar, then the carrier can reduce its rate to 99½ cents, and thereby comply not only with the order of the Commission but with the order of the Supreme Court of the United States as well.

Mr. MANN. That is what the law permits them to do. But what, as a matter of fact, have they done?

Mr. KNAPP. They have either done nothing, and awaited the suit—

Mr. MANN. Have you had suits of that sort commenced?

Mr. KNAPP. I think in every case, after a reasonable delay, a suit has been brought, and those suits are now pending.

Mr. MANN. Have any of those suits been disposed of?

Mr. KNAPP. I am quite confident that no suit has been decided. There are a number pending.

Mr. CLEMENTS. None by the Supreme Court.

Mr. COOMBS. By the circuit court of appeals?

Mr. KNAPP. They have been pushed. I am speaking now, as Mr. Clements suggests, of the cases in the Supreme Court. None have been decided by the Supreme Court.

Mr. MANN. Has any case been disposed of by the court of last resort?

Mr. KNAPP. There has been no case which was commenced since the Supreme Court decided that we could only order the carrier to cease and desist, which has been disposed of by the Supreme Court.

Mr. MANN. It may not have been appealed to the Supreme Court. Has any final order been passed—

Mr. KNAPP. Yes, sir; and sustained by the circuit court of appeals.

Mr. MANN. And not appealed to the Supreme Court of the United States?

Mr. KNAPP. No, sir; in no case has the litigation been entirely finished.

Mr. MANN. How long ago was that decision rendered?

Mr. KNAPP. In 1897.

Mr. MANN. How many cases have you now pending?

Mr. KNAPP. I do not know quite the number.

Mr. MANN. Do you report all the cases in your last report? There are only about two dozen there.

Mr. KNAPP. Yes, sir.

Mr. MANN. In the last annual report, just issued?

Mr. KNAPP. I suppose there are six or eight pending.

Mr. MANN. Are all those cases pending in which you have had occasion to find that the rate was unreasonable and to order a railroad company to cease and desist from charging it in the future?

Mr. KNAPP. With this difference—that there would sometimes be a group of cases, or a number involving the same question, and then, of course, to save expense, only one suit would be brought and the other matters would stand in abeyance awaiting the decision of the question which controlled them all.

Mr. MANN. It is impossible to tell, then, what the operation of the law would be if the Supreme Court passed upon these questions—this question which you decided and ordered the railroad company to obey, your order to cease and desist?

Mr. KNAPP. Of course it is impossible to tell what the railroad company will do.

Mr. MANN. You have had no practical experience in reference to it at all; that matter has not been tried yet?

Mr. KNAPP. No, sir. Of course, as to a railroad company which the Commission has ordered to cease and desist from charging a particular rate, when that order has been sustained by all the courts, including the Supreme Court, we do not know what the carrier would

do. I am only suggesting to you that the carrier can make a nominal change which will effect legal compliance with both the order of the Commission and the decree of the court.

Mr. MANN. And it has been over five years since that opinion was given by the Supreme Court, and yet no case has reached the point yet where you get any practical experience out of it?

Mr. KNAPP. That is substantially true.

Mr. RICHARDSON. I hope you will excuse me, Judge Knapp; I am very much interested about these facts, and the matter of the enlargement of the powers of the Commission. I hope that it will not put you out to ask you to give me certain information, as I was not here when you began your remarks to-day. As I understand from you, when the Commission, for instance, ascertain that the railroad is charging a dollar for certain things, and that that is too much, the Commission say that is too much, and say, for instance, 50 cents would be right—giving that as an illustration—that is not permanent, that order, but suppose it is taken to the circuit court, as you suggest it will be or can be; it can be taken to the circuit court. Now, the circuit court passes upon the order of the Commission as made, and sustains the Commission; then an appeal is taken to the final court, the United States Supreme Court, and that court holds that the order of the Interstate Commerce Commission is not right and proper, and cancels it and sets it aside; has the railroad, from the time you made that order, been complying with it or not, and charging only 50 cents?

Mr. KNAPP. Not at all.

Mr. RICHARDSON. Then what charge is it making?

Mr. KNAPP. The charge originally complained of.

Mr. RICHARDSON. The original one?

Mr. KNAPP. Yes, sir.

Mr. RICHARDSON. Then your order has no effect upon the situation so far as decreasing the charge is concerned?

Mr. KNAPP. No, sir; our order has no effect until it is enforced by court, and of course it is not enforced by a court until the court of last resort has decided the question.

Mr. RICHARDSON. That, as I understand, is not the provision contained in the Corliss bill at all.

Mr. KNAPP. The Corliss bill proposes to make—

Mr. RICHARDSON. To make it arbitrary, and enforce it at once?

Mr. KNAPP. To a certain extent.

Mr. CORLISS. If I understand you, you state that if the rate was a dollar and you should hold that that was an excessive rate, and you had recommended 80 cents, the Supreme Court has held that you could not enforce an 80-cent rate, nor would the court uphold that order and enforce an 80-cent rate.

Mr. KNAPP. That is right.

Mr. CORLISS. So that really, when these cases which are now pending reach the Supreme Court of the United States, all that the court will decide, if they follow their prior decisions, is whether or not they should cease and desist from charging a dollar?

Mr. KNAPP. That is all.

Mr. CORLISS. And that a compliance with the decisions to the extent of 5 cents would be a satisfaction of that entire judgment, and you would have to start over again.

Mr. KNAPP. You have simply got a final decree that the rate originally complained of was too high.

Mr. CORLISS. And they could start again at 99 cents.

Mr. KNAPP. You have got no lower rate fixed. You have no actual relief to anybody. That must be so.

Mr. MANN. They have the power to decide that a rate is unreasonable. That is all they can hold, as a matter of law?

Mr. KNAPP. Under the present statute.

Mr. MANN. They can argue all they please as to what is a reasonable rate, and then it is in the discretion of the railroad company to accept the statement of the court as to what is considered to be a reasonable rate or not, just as they please, or at least you have not tried that to see whether it is or not?

Mr. KNAPP. There has not been time to get a case through the Supreme Court.

Mr. MANN. You have not any decision on that. All you could do was to say that the dollar charge was too much, but the Supreme Court could say what a reasonable charge was.

Mr. KNAPP. No, sir; they can not do it.

Mr. MANN. They can say what a reasonable rate is, but they can not issue an order fixing what it shall be.

Mr. KNAPP. Who can say it?

Mr. MANN. The Supreme Court of the United States.

Mr. KNAPP. No, sir.

Mr. MANN. Oh, yes, they can. It may become very necessary in arguing a particular case. But they can not fix it as a future rate.

Mr. KNAPP. They can only say to the extent of deciding that the rate has been or is unreasonable.

Now, gentlemen, that is the whole question; that is, that is the vital question, the important question.

Mr. ADAMSON. There would still be a good deal of circumlocutionary legislation even after you got the Corliss bill?

Mr. KNAPP. Well—

Mr. ADAMSON. If the Supreme Court decides that the rate you fix, even under the Corliss bill, is too high, you can fix another rate, but hey can still make that——, can they not?

Mr. KNAPP. No, sir. The Corliss bill provides that when the Commission has heard a case in the way I have described——

Mr. ADAMSON. Yes, sir.

Mr. KNAPP (continuing). It may not only condemn a rate complained of, but may prescribe the rate to be substituted in its place in the future.

Mr. ADAMSON. That goes to the courts, and that case is carried through, and they decide that it is too high, and then the Corliss bill says that you may sit down and make another rate, and they can say that that is too high——

Mr. KNAPP. Yes, sir; of course.

Mr. ADAMSON. Why don't you fix legislation so that it has an end somewhere? It looks like human sagacity ought to be able to fix it so as to end this matter somewhere.

Mr. KNAPP. I undertook to say in the beginning that I am not in favor of extreme or radical changes in this law.

Mr. ADAMSON. You would like the present generation to get some benefit out of this, would you not?

Mr. KNAPP. I think the development of our laws on this subject should be by evolution, and not by revolution. And I am not here to advocate—because no pending measure proposes it—any arbitrary or final power on the part of the Commission.

The question is right here, in very narrow compass, and very easily stated. When you have the complaint and the parties all before you and the question examined with all the light thrown upon it that can come from the testimony of witnesses and the argument of counsel, what order shall the Commission have authority to make in such a case? That is all the question there is. That is the real question here.

Mr. RICHARDSON. Right there, do you not think that as a mere matter of common sense and conservatism, from the bench or from any commission that has such authority as that, if the Supreme Court had held that a dollar charge was not reasonable, or any authority was given to you to take advantage of the Corliss bill and fix another charge without any further evidence, that you would fix it, in view of the decision of the Supreme Court, and use conservatism and good judgment in trying to strike a middle ground?

Mr. KNAPP. I can not imagine a commission that would not do that.

Mr. MANN. You can imagine a railroad company that would, but not a commission?

Mr. RICHARDSON. That is another question entirely.

Mr. ADAMSON. You say five years have passed, and you have not got the first case determined yet. If you decided a case under the Corliss act, and the railroads spent five years in going around through the courts, and then it comes back and you take another hearing, and on your own suggestion, or on the suggestion of the court's talk, you make another rate—you may hear evidence or not, or you may fix the new rate on the record, and then the railroad enters another rate, and then the court says that you have not got it quite low enough yet, and it is not at all certain that the Supreme Court will ever decide to let a rate stand; there is a generation gone—

Mr. KNAPP. And in such a case the recommendation of the Commission has been heralded to the country as "the inordinate demand of the Interstate Commerce Commission."

Mr. MANN. Mr. Adamson is pointing at the question, as I understand it, as to whether the court, the Supreme Court of the United States, which refused your decision upon all the evidence you had before it, shall have the power to say what is a reasonable rate.

Mr. KNAPP. Do not let us have any confusion on that. No court can fix a rate for the future. If authority is given to determine in such a case as I have described, what rate shall be substituted for the one under consideration, that authority can be given only to a commission, or exercised directly by Congress itself. It can not be given to a court.

Mr. STEWART. Right there, railroad corporations want to avoid litigation?

Mr. KNAPP. Assuredly they do.

Mr. STEWART. In case the Supreme Court should decide that the Commission was right, and they should fix a reasonable rate for the future, do you not think that the corporation in order to avoid litigation would acquiesce, if it were a reasonable rate?

Mr. KNAPP. Certainly.

Mr. STEWART. To avoid the litigation Mr. Adamson speaks of—further litigation.

Mr. KNAPP. When you wear in mind the very limited authority the Commission now has, which is simply to say, "This thing is wrong," and wear in mind that the order of the Commission saying it is wrong is not obligatory upon anybody, that before it can be enforced there must be a suit in the courts for that purpose, which must be carried through to the courts of last resort; when you take all that into account, I think it is to the credit of the railways of the country as a whole that so many of the recommendations of the Commission have been accepted.

Mr. MAYN. You say that no court can decide what is a reasonable rate?

Mr. KNAPP. For the future.

Mr. COOMBS. It can not establish a rate!

Mr. KNAPP. Can not establish a rate.

Mr. MAYN. That may be true that it can not establish a rate.

Mr. KNAPP. A court can decide whether a rate has been reasonable or not.

Mr. MAYN. The court can decide whether a man has offered a reasonable rate under the common law, and always could; that is a future rate.

Mr. KNAPP. Yes, sir; but it applies only to the time when the tender was made, and to the particular traffic to which the tender relates.

Mr. COOMBS. Does the Supreme Court pass upon questions of fact in its appeals?

Mr. KNAPP. Oh, no; no, sir.

Mr. COOMBS. Does the circuit court of appeals?

Mr. KNAPP. I understand, of course, the circuit court will pass upon the facts.

Mr. COOMBS. Upon your appeal, what do you appeal upon?

Mr. KNAPP. Let us try to avoid confusion at that point. Bear it in mind, gentlemen, that while the determination whether a given rate is, that it has been—reasonable or not, as a judicial question, the determination of the rate to be substituted in the future is not a judicial question, can not be made a judicial question, and that authority, if exercised at all under the circumstances, must be exercised either by the legislative body itself or by an administrative tribunal to which some portion of the legislative power is delegated. Now, that being so, of course you must bear this in mind, that it is incorrect and misleading to speak of an appeal from the order of the Commission. The Commission is not a court, and in a constitutional sense the carrier has not had its day in court when the Commission has decided its case. The carrier gets its day in court under present law when the suit is brought to enforce the order.

Mr. ADAMSON. Your idea is not to ask for a greater number of powers, but for more powers as to the few things that you do try to do; that while you do not seek to go further and fix a rate, or decide how low a rate ought to be, you want the power, when you say a rate is too high, to put that opinion in force and stop the railroad charging that rate!

Mr. KNAPP. This bill proposes that the Commission shall not only have authority to say that this rate complained of is wrong, but to

determine the extent to which it is wrong, and prescribe the rate to be put in its place and observed in the future.

Mr. ADAMSON. I talked to you a while ago about the wheel going around so often. Had we not better improve that bill, or amend it, so as to say that after that thing has been back to you a certain number of times it shall stop, except under such conditions as extraordinary motions made in court, showing that extraordinary conditions exist, beyond the power of a party to control, or something of that sort, and so put an end to the matter somewhere?

Mr. KNAPP. With reference to that, as I said, when you have determined the question as to the authority of the Commission, what kind of an order to make, then the next question comes, what effect shall be given to that order; how shall compliance with it be secured; how shall a review of it by the courts be permitted?

Mr. Thurber, this morning, in commenting on that branch of the case, indicated his opposition to the method of procedure embodied in the Corliss bill, which is that the order of the Commission shall be self-enforcing, so to speak, by reason of accumulating penalties for disobediences, the carrier having the right to go to the court and file a bill to restrain the order; but Mr. Thurber spoke of that as shifting the burden of proof. I want to call your attention to the fact that it does not shift the burden of proof at all. The importance and desirability of that change is not in any way connected with the burden of proof, because under the law as it now stands, when the bill is filed to enforce the order, the findings which the Commission have made constitute a *prima facie* case. The burden of proof is now on the carrier when you get into the courts. The decision of the Commission that this rate is unreasonable and that the carrier must cease and desist from charging it, is *prima facie* good in the circuit court, and the burden of proof is on the carrier to show otherwise.

Mr. COOMBS. Is that a judicial order or a legislative order?

Mr. KNAPP. It is a part of the present law.

Mr. COOMBS. I am asking you for a distinction. Is that a judicial or a legislative order?

Mr. KNAPP. Well, it is an act of Congress which prescribes the method by which the authority of an administrative tribunal is to be enforced.

The CHAIRMAN. The hour of adjournment has arrived. We will be glad if you will be here tomorrow at half past 10, Judge Knapp.

Mr. KNAPP. Very well.

(Thereupon, at 12 o'clock m, the committee adjourned until to-morrow, Friday, April 25, 1902, at 10.30 o'clock a. m.)

FRIDAY, *April 25, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Judge Knapp, will you resume your statement?

Mr. ADAMSON. Before Judge Knapp proceeds I wish to say that I have been listening with great interest to these gentlemen, and I wanted to hear Judge Clements, but I have an important engagement

at the Treasury Department with some constituents of mine, and I want them to understand why I withdraw. I will have to ask you to excuse me.

STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN OF THE UNITED STATES INTERSTATE COMMERCE COMMISSION—Continued.

Mr. KNAPP. Mr. Chairman and gentlemen, you have honored me with such respectful attention during the making of my quite protracted statement that the best acknowledgment I can make is to bring my remarks to a close at the earliest possible moment.

I have endeavored to point out that the first question on this branch of the case is as to what orders the Commission shall have authority to make; and I do not know that I care to add anything to what I have already said upon that subject. You understand the present situation. You are aware that after the fullest investigation, upon complaint, notice, and due hearing, the only order which the Commission now has authority to make is, if the facts so warrant, for the carrier to cease and desist from charging the particular rate, or maintaining the particular rate relation, which is complained of. The question is whether in those cases, and under those circumstances, and subject to the conditions proposed, the Commission shall have authority not only to say that the rate or rate relation complained of is unlawful, but also authority to prescribe in the first instance a rate or rate relation which shall be substituted in place of the one complained of. That is the question.

The CHAIRMAN. Now, Judge, if this will not interrupt you, I wish you would state how comprehensive that order should be, looking to the entire rate charges of a system of roads; whether it should be so comprehensive as to cover an entire schedule of rates, as one act, or whether it should be limited to the particular rate that was complained of. I ask that question for this reason: that I am satisfied that there are parties who would, perhaps, be contented to have, we will say, to illustrate, a single rate regulated by a commission when they would not be willing that at one time and in one order there should be an entire rearrangement of the rates of their whole system of roads. If you would give your views as to that matter, whether the power ought to be limited, and if so, how it would be limited, I think the committee would be glad.

Mr. KNAPP. If I correctly understand the present law, as it would be modified by the provisions of the Corliss bill in the particular section now mentioned, I must say that it is conceivable it would be within the terms of the law that the entire schedule of a given carrier, or system of carriers, might be made the subject of complaint and adjudication. I think I perceive the objection which is suggested by your remarks.

Mr. MANN. If that were the case, would it not be necessary that the court, in passing upon it, should have the authority to say that the order should remain in force as to one part of it if the court should find as to a particular commodity, for instance, the order made a rate unreasonably low? Under this provision the court can either order the order of the Commission to remain in force or not, and if it

found that the rate on a particular commodity would be too low, what would be the effect of that?

Mr. KNAPP. May I defer taking up that question until I take up that particular part of the subject? I am endeavoring to confine this now to what order the Commission shall have power to make. The effect of that order, how it is to be enforced, how it is to be reviewed, is another part of the question.

Mr. MANN. Very well.

Mr. KNAPP. Now, Mr. Chairman, the best answer which I can make to the suggestion presented by you is this: In the first place, it has never yet happened, in the experience of the Commission, that complaint has been made of an entire system of rates, or any carrier, or system of carriers, except where the element of discrimination was involved, and then the complaint was not that the rates were excessive, but that they were unfairly adjusted as between two different localities. I do not recall an instance, and I am very certain not one has ever occurred, in which anything like the comprehensive system of rates has been challenged on the sole ground that it gave the carrier an undue revenue, and imposed upon the public an undue burden. And I think that will always be the case.

My further answer is this: Under any pending proposal the Commission would have no authority to make any kind of an order except one which was justified by the facts proven in the investigation, and as a matter of practice and justice, if a complaining locality should be able to establish, the burden of proof being laid upon it, that the whole range of a given railway's charges were excessive, and secured to that carrier a greater revenue than it was entitled to, and imposed upon the public a burden which it ought not to bear, if that was proved and established to the satisfaction of fair-minded and impartial men, I do not see how we are to resist the conclusion that an appropriate order ought to be made, that is, in such a case. So that when you take into account that there is to be no arbitrary authority, no *ex parte* decree, but only such a determination as a judicial tribunal might reach if it had jurisdiction upon the precise facts, I do not know why the authority should not go to that extent. I add to that—

The CHAIRMAN. Would you object to giving your views upon the practicability of the procedure; for instance, suppose that a complaint originates in New York, where the entire system terminates, and where the complainants might be interested in a rate on some one of the subsidiary lines, branch lines, in a very remote region. What would be the practicability of entering in on the part of the Commission to the necessary proofs, to go over all of the rates from, say, the adjacent stations that might be on that road, and then the practicability of a review of all of that by a court within the limited time of two years, treating it simply as a practical matter, you striving for the information that would be necessary to enable you to make your order, and the court then, in making that investigation which would enable it to determine whether that order was a just one, and involving the entirety of one of these great systems, terminating, we will say, at a seaboard point?

Mr. KNAPP. There is no impracticability in theory. The practical difficulty would be, and it is almost insuperable, I think, for any complaining shipper or locality to make proof that would justify the Commission in interfering with the general range of rates of one road, or a

system of roads, if the element of discrimination between localities was not involved.

One thing and another, Mr. Chairman, has led me to give some consideration to that question, and I have endeavored to inform myself by reading with care the decisions of the Supreme Court and other courts in cases which have some relation to that question. The observations of Mr. Justice Brewer in the recent case of the Kansas City stock yards indicate to my mind that no tribunal would be warranted in reducing the general range of rates, thereby reducing in a substantial degree the entire revenues of the railroad or system, without the clearest and most cogent proof that that carrier was exacting an undue tribute from the public.

Such consideration as I have given to that question leads me to believe, Mr. Chairman, that it would be extremely difficult, practically impossible at the present time, to prove such a case as your observation suggests. I doubt very much whether it can be done. Speaking for myself, I am inclined to say this: That you can not materially reduce the entire revenues of a railroad system until you have some definite basis upon which to proceed; and one of the difficulties which must lie at the foundation of any such inquiry is, on what principal sum is this carrier entitled to make dividends, and then the question comes, What dividends is it entitled to make? Now, when you consider the way in which our railway systems have actually been developed, how they have been built and rebuilt, and are never finished, the question of determining with any reasonable certainty what aggregate sum has been expended on this property which ought to get a return, if the business warrants, you have a very difficult question to solve—one which commissions and courts, I think, will approach with a full sense of its difficulty and of their responsibility.

The CHAIRMAN. I realize in part the difficulty, and the infinite number of factors that enter into the matter as elements of cost of construction, and conditions of operation, and that was why I wanted to know, in your judgment, in case a question of that kind should be presented to you, if it is presented to you in the nature of a complaint and if issue is joined by the answer of the company, then it must be investigated.

Mr. KNAPP. Quite true.

The CHAIRMAN. And what the nature of the proof would be I do not know. Of course I do not know what the character would be, what the elements that would enter into the cost would be; all of that would depend, I suppose, a good deal upon the genius of the complainant; and therefore I wanted to get your opinion, in a case of that kind, if it was practicable for the Commission to hear, and then determine, and then make such report and take such action that the court that would have to review it could have sufficient time; if it was not practically impossible to make an inquiry of this nature within a period of two years, where the case was vigorously prosecuted and resisted.

Mr. KNAPP. You mean, I suppose, if the Board of Trade of Chicago, representing the commercial interests of that city, should complain of all the rates on all the lines leading out into the territory which gets its supplies from Chicago, whether it would be practicable for such a case to be investigated?

The CHAIRMAN. That case might be an illustration, but I had in my mind some competent complainant complaining of the New York Cen-

tral system at the New York terminus; somebody in New York making that complaint on the charges of the entire system.

Mr. MANN. May I give you an instance of a complaint that has just been made, according to the newspapers, by the wholesale merchants of Chicago, who have just presented to Governor Fifer, of your Commission, a protest signed by nearly all of the wholesalers of Chicago, protesting against the railroad rates from New York and Chicago to the Pacific seaboard, which I take it would involve the question of railroad rates from one end of the country to the other, east and west.

Mr. COOMBS. What paper was that?

Mr. MANN. The Chicago morning papers that came this morning.

Mr. KNAPP. That case, if I understand the one you refer to, is not of recent origin, but has been pending for a long time; but even the case that you assume would be a different question from the one the chairman assumes, because his inquiry goes to a case that simply involves the reasonableness per se of the rates. Your case involves an alleged discrimination between localities, which is a very different question.

I know of no recent case, and I am sure there is not one, unless it is within the last twenty-four hours——

Mr. MANN. This was published in the Chicago papers which reached Washington this morning—that is, they were the papers of yesterday morning—and they state that this complaint has been presented to Governor Fifer, or that it would be presented, I do not know which, and the allegation was that the freight rate from New York to the Pacific coast was less than the freight rate from Chicago to the Pacific coast, and hence they alleged their freight rate was too high.

Mr. KNAPP. My very confident belief, Mr. Mann, is that the newspapers are mistaken; that they refer to a case which was commenced more than two years ago.

Mr. MANN. No; this was a new petition, I judged from the papers. Of course, I do not know; the newspapers are not very reliable.

Mr. KNAPP. A case has been pending before the Commission for a long while which, within the scope of the pleadings, presents that question; but it also presented another question in which Chicago is very much interested, and that was the real grievance, and that is the relations between carload and less than carload rates on traffic moving to the Pacific coast, which a little reflection will show comes really to be a controversy between the jobbers of the Mississippi Valley and the Middle West as against the jobbers on the Pacific coast. They did, in that complaint assail the lawfulness of what is known as the blanket rate, under which rates to the Pacific coast are the same from all points on and east of the Missouri River, and the allegation is that to charge the same amount from St. Louis and Chicago to San Francisco as they charge from New York is a discrimination against St. Louis and Chicago.

Mr. COOMBS. Is that why the jobbers of the Pacific coast opposed the amendments to this bill?

Mr. KNAPP. Well, Mr. Representative, I was not aware that the jobbers of the Pacific coast do oppose it, and if they do I certainly can not undertake to say what their reasons are.

Mr. COOMBS. I will show you a letter wherein they do oppose it [handing letter to Mr. Knapp]. This is from the port of Portland.

Mr. KNAPP (after examination of letter). It will serve no useful pur-

pose to enter into a detailed discussion of that matter; but I may mention that I can understand the attitude of the Portland jobbers, because while there is one relation between carload and less than carload rates on traffic moving from Chicago to St. Louis and San Francisco, there is a different relation in carload and less than carload rates on traffic moving from St. Louis and Minneapolis to Portland. The North Pacific jobbers have now got the relation between carload and less than carload rates that they want and that St. Louis wants, so that it is quite natural that the Portland people should not want their present arrangement interfered with, or that we should have any authority to interfere with it, while some equally enterprising gentlemen in Chicago and St. Louis and San Francisco are equally desirous that we should have that power.

Mr. COOMBS. I will state that the jobbers of San Francisco have taken the same position as the jobbers of Portland have.

Mr. KNAPP. I did not know that.

Mr. COOMBS. I will state that they have. I have letters from them as well as from the jobbers of Portland. I did not happen to have them, and I have probably lost them, but I kept that one. That was addressed to somebody else and it was handed to me, which is the reason that I happened to retain it.

Mr. KNAPP. Let me say, Mr. Chairman, I can only repeat that it would be possible for a community to bring a complaint which would challenge the reasonableness of all the rates of all the roads and in all directions in which that community was interested. They can do that now. No bill pending here increases the jurisdiction of the Commission over the subject-matter.

The question is what order in such a case the Commission shall have power and authority to make after it has heard all the facts, and while I must admit that a complaint could be brought which would challenge the whole area of rates of a system, or of more than one system, I think it would be very difficult for the complainant to furnish the proof which would warrant the Commission in making an order reducing those rates simply on the ground that they were unreasonable, and I say further that if that proof should be made, if facts should be established which fairly lead to that conclusion, I do not know any reason why such an order should not be made. If the entire New York Central system is charging the public for its services a sum which gives to that system a greater revenue than it is entitled to secure, and imposes upon the great public which that system serves a greater transportation burden than it ought to bear, and if facts are proven which sustain that conclusion, I do not know any reason why it should not be reached.

You see, gentlemen, to say otherwise it seems to me forces this alternative: The railroads being free from any legal restraint in establishing their tariffs, and being under legal obligation to enforce those tariffs, when they are once established, upon everybody, if there is no way in which those tariffs can be changed when they are proven to be wrong, or because they are oppressive or relatively unjust, then, of course, the determination of what the railroads of this country shall earn, what they shall charge, is in their own hands, and I am not prepared to admit, Mr. Chairman, that the owners and managers of our railway systems are entitled to say themselves what the public shall pay and that their determination in that regard is to be practically

incapable of alteration; which brings us right back again to the question, in such case as that, after complaint and notice and due hearing, and opportunity for the carriers to show every fact upon the question presented, if those facts establish with reasonable certainty that charges complained of are wrong, the question is, Shall the Commission have authority to say what the carriers are to do to correct the wrong? That is all there is of it.

The CHAIRMAN. There is a little more than that, Judge, in the abstract. The question as you presented it is undoubtedly the correct position. I do not think that anybody, or but very few persons, would gainsay that, outside of those who are directly interested; but here is the situation: Up to this time that claim on the part of the railway companies has been acquiesced in by the lawmaking power. The proposition now is to change the location of that right to fix rates. Of course that means antagonism. There are friends of the old method, the present method, and there are friends of the new. There is an effort being made to get legislation, legislation that is urged and legislation that is opposed. Now, as you are presenting the question, and I think rightly, on the part of the railway, the argument is: Here is a surrender of a right which is of inestimable advantage to us, and it involves our entire possible prosperity, if the power that is to be granted is to be as comprehensive as Judge Knapp has just claimed. The object being to get remedial legislation, there are difficulties in the way of securing that.

What I was trying to get from you in your view in the presentation of that was this thought: Is there some intermediate method, as, for instance, the establishment of the power of the Commission over a particular rate, over a rate that is specific and especially complained of, and of marked importance, that could be the subject of legislation without taking from the company the present power that they enjoy over their whole system of rates?

Mr. KNAPP. Well, Mr. Chairman—

The CHAIRMAN. You can see that much opposition might be removed in the way of securing very beneficial legislation.

Mr. KNAPP. I think I perfectly appreciate the position which many railroads take. I think I appreciate its very great importance. As I remarked a couple of days ago, my study of this question, a study which I try to make careful and conscientious, leads me to great conservatism. I am not disposed to advocate any radical alteration in this law, nor any extraordinary increase in the authority of the Commission. It is not necessary for me to advocate that the Commission be given the authority in respect of making an order which the Corliss bill proposes, for that question is for you. My duty is to explain to you exactly the present situation, to have you understand precisely the extent to which the Commission's authority now goes, to point out the authority which I think it would have if this measure were adopted. It is for you, gentlemen, to say whether that authority shall be granted or not. I am not covetous of increasing authority.

The CHAIRMAN. No; I do not—

Mr. KNAPP. It is often charged, Mr. Chairman, that the Interstate Commerce Commission has disregarded its obligations under this law, failed to perform the duties which it might perform, and is eagerly reaching out for great authority with a view of making itself a body of enormous consequence. There is no foundation for the charge; no

Mr. STEWART. To avoid the litigation Mr. Adamson speaks of—further litigation?

Mr. KNAPP. When you bear in mind the very limited authority the Commission now has, which is simply to say, "This thing is wrong," and bear in mind that the order of the Commission saying it is wrong is not obligatory upon anybody, that before it can be enforced there must be a suit in the courts for that purpose, which must be carried through to the courts of last resort; when you take all that into account, I think it is to the credit of the railways of the country as a whole that so many of the recommendations of the Commission have been adopted.

Mr. MANN. You say that no court can decide what is a reasonable rate?

Mr. KNAPP. For the future.

Mr. COOMBS. It can not establish a rate?

Mr. KNAPP. Can not establish a rate.

Mr. MANN. That may be true that it can not establish a rate.

Mr. KNAPP. A court can decide whether a rate has been reasonable or not.

Mr. MANN. The court can decide whether a man has offered a reasonable rate under the common law, and always could; that is a future rate.

Mr. KNAPP. Yes, sir; but it applies only to the time when the tender was made, and to the particular traffic to which the tender relates.

Mr. COOMBS. Does the Supreme Court pass upon questions of fact in its appeals?

Mr. KNAPP. Oh, no; no, sir.

Mr. COOMBS. Does the circuit court of appeals?

Mr. KNAPP. I understand, of course, the circuit court will pass upon the facts.

Mr. COOMBS. Upon your appeal, what do you appeal upon?

Mr. KNAPP. Let us try to avoid confusion at that point. Bear it in mind, gentlemen, that while the determination whether a given rate is—that it has been—reasonable or not, as a judicial question, the determination of the rate to be substituted in the future is not a judicial question, can not be made a judicial question, and that authority, if exercised at all under the circumstances, must be exercised either by the legislative body itself or by an administrative tribunal to which some portion of the legislative power is delegated. Now, that being so, of course you must bear this in mind, that it is incorrect and misleading to speak of an appeal from the order of the Commission. The Commission is not a court, and in a constitutional sense the carrier has not had its day in court when the Commission has decided its case. The carrier gets its day in court under present law when the suit is brought to enforce the order.

Mr. ADAMSON. Your idea is not to ask for a greater number of powers, but for more power as to the few things that you do try to do; that while you do not seek to go further and fix a rate, or decide how low a rate ought to be, you want the power, when you say a rate is too high, to put that opinion in force and stop the railroad charging that rate?

Mr. KNAPP. This bill proposes that the Commission shall not only have authority to say that this rate complained of is wrong, but to

determine the extent to which it is wrong, and prescribe the rate to be put in its place and observed in the future.

Mr. ADAMSON. I talked to you a while ago about the wheel going around so often. Had we not better improve that bill, or amend it, so as to say that after that thing has been back to you a certain number of times it shall stop, except under such conditions as extraordinary motions made in court, showing that extraordinary conditions exist, beyond the power of a party to control, or something of that sort, and so put an end to the matter somewhere?

Mr. KNAPP. With reference to that, as I said, when you have determined the question as to the authority of the Commission, what kind of an order to make, then the next question comes, what effect shall be given to that order; how shall compliance with it be secured; how shall a review of it by the courts be permitted?

Mr. Thurber, this morning, in commenting on that branch of the case, indicated his opposition to the method of procedure embodied in the Corliss bill, which is that the order of the Commission shall be self-enforcing, so to speak, by reason of accumulating penalties for disobediences, the carrier having the right to go to the court and file a bill to restrain the order; but Mr. Thurber spoke of that as shifting the burden of proof. I want to call your attention to the fact that it does not shift the burden of proof at all. The importance and desirability of that change is not in any way connected with the burden of proof, because under the law as it now stands, when the bill is filed to enforce the order, the findings which the Commission have made constitute a *prima facie* case. The burden of proof is now on the carrier when you get into the courts. The decision of the Commission that this rate is unreasonable and that the carrier must cease and desist from charging it, is *prima facie* good in the circuit court, and the burden of proof is on the carrier to show otherwise.

Mr. COOMBS. Is that a judicial order or a legislative order?

Mr. KNAPP. It is a part of the present law.

Mr. COOMBS. I am asking you for a distinction. Is that a judicial or a legislative order?

Mr. KNAPP. Well, it is an act of Congress which prescribes the method by which the authority of an administrative tribunal is to be enforced.

The CHAIRMAN. The hour of adjournment has arrived. We will be glad if you will be here tomorrow at half past 10, Judge Knapp.

Mr. KNAPP. Very well.

(Thereupon, at 12 o'clock m, the committee adjourned until to-morrow, Friday, April 25, 1902, at 10.30 oclock a. m.)

FRIDAY, *April 25, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Judge Knapp, will you resume your statement?

Mr. ADAMSON. Before Judge Knapp proceeds I wish to say that I have been listening with great interest to these gentlemen, and I wanted to hear Judge Clements, but I have an important engagement

at the Treasury Department with some constituents of mine, and I want them to understand why I withdraw. I will have to ask you to excuse me.

STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN OF THE UNITED STATES INTERSTATE COMMERCE COMMISSION—Continued.

Mr. KNAPP. Mr. Chairman and gentlemen, you have honored me with such respectful attention during the making of my quite protracted statement that the best acknowledgment I can make is to bring my remarks to a close at the earliest possible moment.

I have endeavored to point out that the first question on this branch of the case is as to what orders the Commission shall have authority to make; and I do not know that I care to add anything to what I have already said upon that subject. You understand the present situation. You are aware that after the fullest investigation, upon complaint, notice, and due hearing, the only order which the Commission now has authority to make is, if the facts so warrant, for the carrier to cease and desist from charging the particular rate, or maintaining the particular rate relation, which is complained of. The question is whether in those cases, and under those circumstances, and subject to the conditions proposed, the Commission shall have authority not only to say that the rate or rate relation complained of is unlawful, but also authority to prescribe in the first instance a rate or rate relation which shall be substituted in place of the one complained of. That is the question.

The CHAIRMAN. Now, Judge, if this will not interrupt you, I wish you would state how comprehensive that order should be, looking to the entire rate charges of a system of roads; whether it should be so comprehensive as to cover an entire schedule of rates, as one act, or whether it should be limited to the particular rate that was complained of. I ask that question for this reason: that I am satisfied that there are parties who would, perhaps, be contented to have, we will say, to illustrate, a single rate regulated by a commission when they would not be willing that at one time and in one order there should be an entire rearrangement of the rates of their whole system of roads. If you would give your views as to that matter, whether the power ought to be limited, and if so, how it would be limited, I think the committee would be glad.

Mr. KNAPP. If I correctly understand the present law, as it would be modified by the provisions of the Corliss bill in the particular section now mentioned, I must say that it is conceivable it would be within the terms of the law that the entire schedule of a given carrier, or system of carriers, might be made the subject of complaint and adjudication. I think I perceive the objection which is suggested by your remarks.

Mr. MANN. If that were the case, would it not be necessary that the court, in passing upon it, should have the authority to say that the order should remain in force as to one part of it if the court should find as to a particular commodity, for instance, the order made a rate unreasonably low? Under this provision the court can either order the order of the Commission to remain in force or not, and if it

found that the rate on a particular commodity would be too low, what would be the effect of that?

Mr. KNAPP. May I defer taking up that question until I take up that particular part of the subject? I am endeavoring to confine this now to what order the Commission shall have power to make. The effect of that order, how it is to be enforced, how it is to be reviewed, is another part of the question.

Mr. MANN. Very well.

Mr. KNAPP. Now, Mr. Chairman, the best answer which I can make to the suggestion presented by you is this: In the first place, it has never yet happened, in the experience of the Commission, that complaint has been made of an entire system of rates, or any carrier, or system of carriers, except where the element of discrimination was involved, and then the complaint was not that the rates were excessive, but that they were unfairly adjusted as between two different localities. I do not recall an instance, and I am very certain not one has ever occurred, in which anything like the comprehensive system of rates has been challenged on the sole ground that it gave the carrier an undue revenue, and imposed upon the public an undue burden. And I think that will always be the case.

My further answer is this: Under any pending proposal the Commission would have no authority to make any kind of an order except one which was justified by the facts proven in the investigation, and as a matter of practice and justice, if a complaining locality should be able to establish, the burden of proof being laid upon it, that the whole range of a given railway's charges were excessive, and secured to that carrier a greater revenue than it was entitled to, and imposed upon the public a burden which it ought not to bear, if that was proved and established to the satisfaction of fair-minded and impartial men, I do not see how we are to resist the conclusion that an appropriate order ought to be made, that is, in such a case. So that when you take into account that there is to be no arbitrary authority, no ex parte decree, but only such a determination as a judicial tribunal might reach if it had jurisdiction upon the precise facts, I do not know why the authority should not go to that extent. I add to that—

The CHAIRMAN. Would you object to giving your views upon the practicability of the procedure; for instance, suppose that a complaint originates in New York, where the entire system terminates, and where the complainants might be interested in a rate on some one of the subsidiary lines, branch lines, in a very remote region. What would be the practicability of entering in on the part of the Commission to the necessary proofs, to go over all of the rates from, say, the adjacent stations that might be on that road, and then the practicability of a review of all of that by a court within the limited time of two years, treating it simply as a practical matter, you striving for the information that would be necessary to enable you to make your order, and the court then, in making that investigation which would enable it to determine whether that order was a just one, and involving the entirety of one of these great systems, terminating, we will say, at a seaboard point?

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Such consideration as I have given to that question leads me to believe, Mr. Chairman, that it would be extremely difficult, practically impossible at the present time, to prove such a case as your observation suggests. I doubt very much whether it can be done. Speaking for myself, I am inclined to say this: That you can not materially reduce the entire revenues of a railroad system until you have some definite basis upon which to proceed; and one of the difficulties which must lie at the foundation of any such inquiry is, on what principal sum is this carrier entitled to make dividends, and then the question comes, What dividends is it entitled to make? Now, when you consider the way in which our railway systems have actually been developed, how they have been built and rebuilt, and are never finished, the question of determining with any reasonable certainty what aggregate sum has been expended on this property which ought to get a return, if the business warrants, you have a very difficult question to solve—one which commissions and courts, I think, will approach with a full sense of its difficulty and of their responsibility.

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Mr. KNAPP. Quite true.

The CHAIRMAN. And what the nature of the proof would be I do not know. Of course I do not know what the character would be, what the elements that would enter into the cost would be; all of that would depend, I suppose, a good deal upon the genius of the complainant; and therefore I wanted to get your opinion, in a case of that kind, if it was practicable for the Commission to hear, and then determine, and then make such report and take such action that the court that would have to review it could have sufficient time; if it was not practically impossible to make an inquiry of this nature within a period of two years, where the case was vigorously prosecuted and resisted.

Mr. KNAPP. You mean, I suppose, if the Board of Trade of Chicago, representing the commercial interests of that city, should complain of all the rates on all the lines leading out into the territory which gets its supplies from Chicago, whether it would be practicable for such a case to be investigated?

The CHAIRMAN. That case might be an illustration, but I had in my mind some competent complainant complaining of the New York Cen-

tral system at the New York terminus; somebody in New York making that complaint on the charges of the entire system.

Mr. MANN. May I give you an instance of a complaint that has just been made, according to the newspapers, by the wholesale merchants of Chicago, who have just presented to Governor Fifer, of your Commission, a protest signed by nearly all of the wholesalers of Chicago, protesting against the railroad rates from New York and Chicago to the Pacific seaboard, which I take it would involve the question of railroad rates from one end of the country to the other, east and west.

Mr. COOMBS. What paper was that?

Mr. MANN. The Chicago morning papers that came this morning.

Mr. KNAPP. That case, if I understand the one you refer to, is not of recent origin, but has been pending for a long time; but even the case that you assume would be a different question from the one the chairman assumes, because his inquiry goes to a case that simply involves the reasonableness per se of the rates. Your case involves an alleged discrimination between localities, which is a very different question.

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Mr. KNAPP. My very confident belief, Mr. Mann, is that the newspapers are mistaken; that they refer to a case which was commenced more than two years ago.

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Mr. COOMBS. Is that why the jobbers of the Pacific coast opposed the amendments to this bill?

Mr. KNAPP. Well, Mr. Representative, I was not aware that the jobbers of the Pacific coast do oppose it, and if they do I certainly can not undertake to say what their reasons are.

Mr. COOMBS. I will show you a letter wherein they do oppose it [handing letter to Mr. Knapp]. This is from the port of Portland.

Mr. KNAPP (after examination of letter). It will serve no useful pur-

of his right to charge that sum. To that extent, the extent of that 10 cents, there is a confiscation of a right without the intervention of the court, without his having his day in court, and without compliance with the constitutional provision that no man shall be deprived of his property without due process of law.

Mr. KNAPP. Now, I will put it in this way. The court has plenary and exclusive authority. If a carrier was charging a dollar for interstate carriage you could pass a law to fix that rate at 90 cents. The carrier could file a bill in court on the theory that that was an unconstitutional statute, and the court would stay the execution of that statute until the case was heard and determined. In that way the carrier gets its day in court. Now, similarly, that is just what would happen in this case.

Mr. STEWART. What if the law was unconstitutional; what would the law amount to?

Mr. KNAPP. It would not amount to anything if the court overturned it. I do not want any law that the Supreme Court says is unconstitutional.

Mr. STEWART. Unless you think that the enactment of a law by Congress is a due process of law, there is no necessity of taking time to go through the experiment of the process of the courts. If an enactment by Congress shows due process of law, does that mean an act of Congress, or a trial in court?

Mr. KNAPP. It means a trial.

Mr. MANN. The question is whether you are taking property when you fix a rate. Congress has power to fix a rate, if the rate is not unreasonably low—

Mr. KNAPP. No, sir.

Mr. MANN. It is taking private property if it is unreasonably low.

Mr. ADAMSON. If you take away the earnings and income of the railroad, I think you are materially depriving them of their property.

Mr. MANN. Not if it is more than they are entitled to.

Mr. KNAPP. Take this illustration: If a railroad was charging a dollar, and you fixed a rate of 90 cents by direct legislation, the carrier would be obliged to obey that law or to get rid of it.

Mr. ADAMSON. Yes, sir.

Mr. COOMBS. Suppose Congress or the legislature of a State passed a law directly fixing the rate itself, acting in its primary right, and should also embody in that law this term: That if the railroad company sought a remedy the onus should be upon the railroad and it would have to proceed to the courts to set it aside. Now, that is practically the proposition that the chairman of this committee put before you, except he applied it to your authority. Applying it now to the legislature itself, suppose they fix a rate and put the onus on the railroad company to ascertain whether they have done an unlawful act or not—that is, have violated the Constitution or not in taking property without due process of law—what would be the effect of that law?

Mr. KNAPP. Just this. It does not make any difference whether there is any provision in that law or not, if in the case I named, where the railroad has been charging a dollar, you should by an act of Congress fix that rate at 90 cents, whether you provided in the statute that the railway could review it or not, it would have a right to review. It would have a right to file its appeal and claim that that was an unconstitutional statute because it deprived it of its property.

Mr. COOMBS. They have this right in the absence of that, to ignore it and leave it alone.

Mr. KNAPP. Oh, no.

Mr. MANN. They have a right to file a charge that according to the bill it is not being enforced.

Mr. KNAPP. If they did not go into court they would have to suffer the consequences.

Mr. MANN. In the proceeding against them the onus would be on the Government?

Mr. KNAPP. No, sir; I think not.

Mr. MANN. The Supreme Court of the United States settled that in the original warehouse case, that the public had the authority to fix a rate for the warehouse, provided the law would be unconstitutional if the rate was fixed unreasonably low, so that it did take private property. That would be the very question—

Mr. KNAPP. Yes, sir. Now, similarly, Mr. Chairman, in this case, if the railroad is charging a dollar, and the Commission, having authority, had, after this full investigation, fixed the rate at 90 cents, the carrier can file its bill to stay that order, not only on the theory that it is unconstitutional, but on the theory that it is not a just, reasonable, and lawful order, because the Commission has authority to make only a just, reasonable, and lawful order; and the courts, I take it as a matter of course, on the filing of such a bill, would stay the order pending the hearing of that suit.

For that reason I can not advocate all the provisions of the Corliss bill in that regard. That bill, as I understand it, provides that the filing of a bill would of itself operate as a stay for thirty days, but the order could not be stayed beyond the thirty days, unless it plainly appeared to the court that the order was unreasonable upon the facts or made upon some erroneous rule of law.

Mr. MANN. I think you are slightly mistaken as to the bill, Judge. The stay of thirty days is after the order is made, in order to give an opportunity to file the bill.

Mr. KNAPP. That may be. Now, I am not prepared to advocate that particular provision.

Mr. MANN. Do you not think there ought to be a reasonable stay after an order is made?

Mr. KNAPP. Yes, sir.

Mr. MANN. So that the railroad company may have an opportunity—

Mr. KNAPP. Yes, sir; certainly. What I referred to is the further provision that undertakes not to permit a stay beyond the thirty days, unless it plainly appears that the order is wrong. That can not be determined until the case is tried. I would not myself like to see the law so framed that the mere filing of the bill should of itself operate as an indefinite stay; but I think the carrier should have a right, after it has filed its bill, to make an application to the court for a stay of that order pending the hearing of its case, and that a court should have discretion to grant that stay pending the hearing of the case. I say that because I think that is in harmony with the general administration of the law. It rather accords with one's sense of justice, and it avoids any constitutional question.

Now, it has practically come to this, that to determine what authority the Commission shall have to make an order, it is left with the

courts, then, to say whether that order shall be stayed pending the trial of the suit brought for a perpetual stay. I think that is a reasonable and workable plan.

Mr. MANN. You want a change of the law so that the order will go into effect at once. Suppose that that were done and you make an order, what is the result? The railroad company does nothing in the way of filing a bill. What is the result? Maybe the railway company pays no attention to it.

Mr. KNAPP. Yes; but then the penalties would accumulate against it. That is the theory of the bill. And in a suit to recover those penalties, I think the carrier could not question the lawfulness of the order. So on this theory the carrier is put in a position where it must either do something or go to court to get rid of the order. I think that is a very simple, workable, and not oppressive method of procedure. It does not shift the burden of proof; it would not materially change the course of litigation. It would have two beneficial results. First, it would relieve the Commission from the embarrassing attitude of being a prosecutor in the courts to enforce its own decrees. In the second place, I think this would happen as a matter of practice; I think in many cases the courts would be likely to stay the order under some provision that would require the carrier to keep an account of its traffic pending the hearing, so that if the order of the Commission were finally sustained, the money could be paid over to the shippers who were entitled to it.

Mr. MANN. I do not quite understand the distinction which you make about an order being unconstitutional when you file a bill for injunction against it, and being constitutional when you seek to enforce it by penalties.

Mr. KNAPP. If you should fix a rate of 90 cents in the case I have been talking about, and provide in the statute that if they charged more than 90 cents they should be subject to a penalty of \$500 a day, they would have to go to work to get rid of that statute, would they not?

Mr. MANN. That is a question of the constitutionality of the law.

Mr. KNAPP. Yes; it is.

Mr. MANN. Nobody questions the power of Congress to pass a constitutional act upon the subject. Now, if the act is unconstitutional, it can be attacked in any way, in the way of seeking to enforce a penalty, or in any other form that would arise.

Mr. KNAPP. I do not know about that.

Mr. MANN. It is not collateral to attack the order. It is a direct question of the constitutionality of the act.

Mr. COOMBS. You can attack that collaterally or in any other way.

Mr. MANN. Of course, you can attack the constitutionality in any way.

Mr. KNAPP. The order of an administrative body which has limited jurisdiction can be assailed on the ground that it exceeded the authority of the body that made it.

Mr. MANN. That is a question about jurisdiction. There is no question about the jurisdiction. The question would be whether you made a constitutional order or not, or violated the Constitution of the United States.

Mr. KNAPP. No, Mr. Mann; this bill does not provide anything of the kind. Undoubtedly, if the Commission made an order which

deprived the carrier of its property against its constitutional rights, the carrier could file a bill whether it was permitted to do so by this law or not, just as it could if it was fixed by statute, without any permission. But the proposition is to give the Commission authority to make a just, reasonable, and lawful order on the facts disclosed. Now, I say a court can review that action and decide whether that action is just, reasonable, and lawful on the facts, although that order, if a statute, might not be unconstitutional.

✓ Mr. STEWART. There is no doubt that Congress can fix a reasonable rate constitutionally, but is there not much doubt under the decisions whether it can delegate that power to the Commission?

Mr. KNAPP. Not the slightest, Mr. Stewart. That has been over and over again settled.

Mr. Chairman, I feel as though I had imposed upon the committee. I am very much obliged for the patience with which you have heard me. If there are any more questions to be asked me, I am entirely ready to answer them.

Mr. MANN. You did not answer the question which I put to you a while ago as to the administration of this order which goes to the whole question.

Mr. KNAPP. What was that?

Mr. MANN. If you have the power to fix and make an order which the court must pass upon as to whether the order is reasonable or not, and the court finds one portion of the order is reasonable—as, for instance, the rate upon a particular commodity—what will be the effect then?

The court must hold that your order was unreasonable and set aside your order, but can not say that any portion of the order shall remain in effect under the terms of this —

Mr. KNAPP. That is as I understand it. If the order was not in all respects just, reasonable, and lawful, the court would stay it.

Mr. MANN. I am talking about a final opinion of the court, as to whether it should have the power to say that a portion of the order should stand and a portion of it should not stand.

Mr. KNAPP. I have no disposition to avoid the question. I have a little difficulty in understanding what it would be in a concrete case.

Mr. MANN. Suppose you fix the rates on a dozen articles between Chicago and New York, and the court, upon its decision, finds that the rate upon one of those articles is too low, should the court have the power to say that the order should remain in force as to the eleven other articles, or permit the order to remain in force, or set aside the entire order?

Mr. KNAPP. Oh, I think it should be the former. I think if the order was so separable in reference to its provisions that the court could say, "Some parts of this order are just, reasonable, and lawful, and some parts are not," that that should be done.

Mr. MANN. I take it that the court could not do that under the provisions of this bill, and I do not know whether the power ought to be granted or not. You answered the question I wanted to get an answer to.

Mr. KNAPP. There are certain general questions, but all that I care to talk about is the question whether the method of enforcing the orders shall be had as in this bill proposed, and I think it ought to be.

Mr. Chairman, unless there is some question to be asked, I feel as

though I had claimed your attention much longer than I ought, certainly much longer than I expected.

The CHAIRMAN. We have made claims upon you, sir.

Mr. KNAPP. It is my duty, and a pleasant duty, to give you all the information I can, and to make every suggestion to you that I can which will aid you in reaching a wise conclusion.

The chairman asked me to say a word about classifications. As you know, there are three great classifications—one which applies in the territory north of the Ohio and Potomac rivers and east of the Mississippi; one which applies in all of the territory south of the Ohio and Potomac rivers and east of the Mississippi, and the third, which applies to all the rest of the territory, being the territory west of the Mississippi River.

And a great deal has been said about a uniform classification for the whole United States. I think a uniform classification is desirable, and I think one could be made. Some confusion, and even some actual discrimination results from the present diversity of classification where traffic moves from one territory into another of such a kind that it is in one class in one territory and in another class in another territory, and while some instances of injustice result from that situation, and while a uniform classification for the whole country is highly desirable, there are so many other things which seem to be of so much more importance that I could not urge you to take any legislative action in that regard.

I may say, however, that a uniform classification can be secured by a voluntary action of the railroads only when they are all agreed about it, and that is not liable ever to happen; and when we get other things which are of urgent importance, and come to the question of securing uniform classification, Congress will have to take the initiative, in my judgment, and provide some way by which a uniform classification can be compelled. What the people are complaining of just now is not of the diversity of classification, but of the ease with which rates are raised by changing an article from one classification to another.

As has already been stated, and I have no doubt that you are all aware, two years ago the rates on some 800 of the articles in most common use were increased, averaging, I think, about 35 per cent, by the simple process of changing their classification from the class in which they had been to a higher class which bore a higher rate; and no measure which is pending before this committee, no point which I have discussed, would go to that question or limit in any way the present right of the carriers to change the classification of an article. Of course, we may get some day—I do not know that I would be disposed to advocate it immediately—some reasonable restraint upon the power of the road to increase rates by the simple process of changing the classification. It is a pretty serious question.

And there is some good reason, I think, for providing, if we could by a safe general statute, that where the rates on a given article have been enforced for a certain length of time, that if those rates should be increased, and anybody within a reasonable time complained of that increase, the Commission should have discretionary power to require the carrier to restore the old rate pending a determination as to whether the higher rate was justified or not. But no such proposal is before you, and I preferred, if I could, to avoid the discussion of

questions that are not likely to take the form of practical legislation except to the extent that the general principles and collateral questions are involved in the discussions of the measures before you.

The CHAIRMAN. Judge, you adverted a few moments ago incidentally to the question of pooling. I have not any doubt but what the committee would like to have your views with regard to the authorization of associated action of that kind, which comes under the general name of pooling.

Mr. KNAPP. Mr. Chairman, I have some rather definite convictions on that subject, and I am at your service, if that is your pleasure.

The CHAIRMAN. If you please.

Mr. KNAPP. I have alluded to the subject in an incidental way, but did not pursue it, because I did not understand that that question was involved—

The CHAIRMAN. It is not in any legislation pending.

Mr. KNAPP. In the bills pending before the committee.

The CHAIRMAN. It is a subject which has been discussed a great deal and is in the public mind a great deal, and we would like to have your views with regard to it.

Mr. KNAPP. Well, let me begin with putting a case this way: If we were presented with the alternative between actual railway competition maintained by a large number of actually separate and independent roads, on the one hand, and the legal privileges to be granted by Congress to those roads to associate and agree to the combination of traffic or its earning, that would be one question; but to-day it is only an academic question. So far as this subject you now suggest is concerned, the only choice we have got left is not the one I have described. The only choice that remains is between general, almost complete, railway combination, without any restraint, or to the extent that roads still remain independent, allowing them to measurably associate and make agreements with each other respecting their competitive traffic.

Now, my associate the other day pointed out to you the extent to which railway combination has already proceeded, and his statements, which I think are quite within the truth, are that already a large majority of the mileage, and the mileage upon which all the traffic practically depends, is controlled by a very few men. And it is rather curious to me to observe that the men who have been the most vociferous in opposing any idea that railroads could be allowed to carry on their operations by legalized association seem to view with entire complacency an actual consolidation of those roads. No one can tell to what extent the railway combinations of recent years and those that are to be anticipated in the future have been induced, if not forced, by our legislative policy.

No one knows what would have happened in that regard under a different legislative policy. No one can express any more than his own individual opinion, and for myself I firmly believe that if, from the beginning, we had recognized the nature of this business, its relation to every form of industry, if we had understood it as a public service, if we had appreciated the fact that the railroads are discharging a function of the Government, a function which the Government might rightfully discharge by direct agency, but which from reasons of expediency only it has so far allowed to be done by corporations created for that purpose, if we had recognized the monopolistic nature of the business, and provided by wise and reasonable rules of law for railway

association, subject to public control, then the evils which have since troubled us would not have occurred, many of the railway combinations would not have been made, there would be to-day a much larger number of separate and actually independent railway ownerships, and a far greater degree of railway competition than now occurs or is likely to occur in the future.

So that the object of the prohibition of pooling in 1887, when this law was passed, the purpose of the antitrust law, the whole legislative policy of the country in that regard, has not only failed to accomplish the object at which it was aimed, but has indirectly but potently influenced the opposite result, and we have far less railway competition to-day in this country, in my judgment, than we would have had under an opposite policy. And just so far as we can and ought to rely upon railway competition as a protection against unreasonable charges, just so far as we can or ought to get the benefit of railway competition, we must do so by allowing railroads to agree with each other and putting those agreements under public control. It is an absurdity to me, gentlemen, that one law should say to the railroads, "You must publish your rates, and you must make them alike and open to everybody, and if you depart from them you commit a misdemeanor," and to say by another law, "If you agree to maintain those rates, you also commit a misdemeanor." It is impossible for railroad operations to be conducted in conformity with both laws, and they are not so conducted, and the only recourse is to bring about the elimination of competition by such methods as the law itself provides.

Now, I said incidentally the other day, and I think spoke quite within bounds when I said it, that you would be surprised upon investigation to discover the comparatively slight and inconsequential degree to which open tariff rates have been reduced in this country within the last ten years as the result of railway competition. The basis of rates remains where it was fifteen years ago. The class rates in official territory are the same as they were ten years ago, and many articles are in a higher class than they were then. The railway competition has been a very forceful influence, but it has found expression in the secret and preferential rates by which a few men have profited, and not in reduced rates to the general public.

Now, consider the subject from another point of view for a moment. Take the railroads between Kansas City and Chicago. They had at a certain date a certain rate in effect on grain from Kansas City to Chicago. Of course, whatever rate one road puts in every other road must put in; that goes without saying. Now, suppose our laws had been so efficient, so enforceable that they would have been complied with. Suppose no railroad would ever have dared to deviate from its published tariffs on account of the risks and penalties that it would incur. Each railroad would know that if it made a reduction in the open tariff every other road would make the same reduction, so that the distribution of tariff between the different roads would be just the same on one published rate as on another. Now, under those circumstances what possible inducement would there ever be to either road to reduce its rate?

If they were charging 20 cents on grain ten years ago, each one of them charging 20 cents, and not one of them dared to make a different rate, they would have secured a certain distribution of that business between them on the 20-cent basis. Each one of them would know

that if it reduced that rate to 15 cents, every other one would go to 15 cents, and there would be no different distribution between them on the 15 cent and on the 20 cent basis. No possible inducement to reduce the rate. And I fail to see how it is to be expected that any railroad tariff will be reduced as a matter of fact by methods which the present laws contemplate.

Of course, the railroads discovered it, and what is the result? The competition took the form of a rebate and the secret rate, and that has done more than any other influence, in my judgment, to build up the great concerns and strengthen the great combinations which are now regarded with so much apprehension.

I believe that we should have had a great deal less of that sort of thing, that industrial combination would not have taken many of the forms which it has assumed, if from the beginning of railroad history it would have been impossible for any railroad shipper to get any better rate than a smaller one.

So the actual result now of railroad competition is to benefit the large shipper. The principal outcome is to aid the strong against the weak. It is not the isolated and infrequent shipper who gets something off the tariff; it is the large combination.

Mr. STEWART. Then you think that providing pooling would prevent any further combination between the railroads?

Mr. KNAPP. I think it would have a tendency. Here are the roads between Kansas City and Chicago. Pooling would simply mean an agreement between them to divide the competitive traffic. They would retain their separate organizations, their separate ownership, their corporate autonomy; they would simply be allowed to make legal agreements with each other for the combination of the competitive business, and that agreement would be under ample public control. Is not that better than to allow them to actually combine in one case? At least the competitive attitude remains. There is potential competition. There is independent and separate ownership. In the other case, if you have consolidation, why the competition is permanently wiped out.

Mr. STEWART. Do you think the railway companies would be satisfied with less profit under the pooling system than they get under the combination system?

Mr. KNAPP. No one can say about that. I do not know.

Now, going a step further, having referred to present conditions and the present situation, we are liable, possibly, to be confused by this word "pooling." If the right of contract were granted which is now denied, I do not anticipate that that right would be exercised to any great extent in the actual combination of traffic or its earnings. It is no longer necessary to do that. Systems have been so developed and have so natural relations to each other that there is not an assembling of the competitive traffic at some point, and the combination of that by an agreement. The right should be a broader one than that which is denied by the antipooling section of the present law—a right to form associations, a right to make agreements with each other as to what are just and reasonable rates, and to agree with each other to maintain them. That is the general form which those matters would take, rather than the specific one of a combination of traffic.

Now, I put the matter from my point of view on the broad ground of public welfare. I can see where the competition between railways,

which it has been the aim of our laws to enforce, has given great advantages to large capitalists. I fail to see where it has been of any appreciable benefit to the great mass of our people. I think you will have difficulty in demonstrating that that policy has operated to the advantage of the farmers, the small dealers, the wage-earners of the country. It has been an immensely profitable policy to the Armours, and the Rockefellers, and the Havemeyers of the United States; and if I had to choose, gentlemen, between a range of rates absolutely imposed upon everybody, without deviation or exception, although somewhat higher than might be reasonable—if I had to choose between that and the secret rates to a few large shippers, with the resulting discrimination which puts the great mass of small dealers at serious and sometimes staple disadvantage, I would say that the public welfare was promoted by the former policy.

Take our antitrust law. Have you estimated the scope of that law as it has been interpreted by the Supreme Court? The logic of that decision is to condemn any sort of understanding or arrangement between rival roads which in any degree restricts their competition. So if the rival railroads should agree on storage charges or demurrage, or car service rates, those incidents of transportation which the general public desire to have uniform, stable, and certain, to say nothing about rates, those carriers would violate the antitrust law, because our Supreme Court has said that law means this. It is not a question whether the restraint upon combination is reasonable or unreasonable, but they have said that any arrangement, any understanding, any combination, which has the effect of putting the restraint upon the competitive freedom of parties, although that restraint be wholesome and beneficent to individuals, is a violation of the antitrust law, and I agree with my colleague, Judge Prouty, when he told you that if the antitrust law could be and should be applied to the railroad operations in this country—the spirit of it be applied—it would bankrupt every railroad and bring on a transportation condition of chaos.

And one of the difficulties of this whole situation, in my judgment, is that there is no legal sanction or support for that method of railway operation, according to which they ought to be conducted. Why, the commerce of the country, the welfare of the country, requires the utmost freedom of action, and every arrangement of association and interchange and uniformity gives an indirect but very great public advantage.

So I say we ought to have recognized the nature of this industry and its relation to every other form of activity, and should have encouraged associated action under proper restraint. Why, gentlemen, just imagine the agriculture of this country, the manufactures of this country, the mining of this country, conducted by methods which have no legal sanction or support. And that is exactly the railway situation to-day; and while the business done by our railroads is enormous and their earnings very great, I regard the general railway situation with no little apprehension for the very reason that I have now tried to suggest.

If the Attorney-General is right in his suit against the Northern Securities Company—and very likely he is; I am not implying the slightest criticism upon the Administration for bringing the suit, for I think, on the contrary, the Administration is very much to be com-

mended for bringing it—if he is right, just see the consequences that are involved.

Now, it may be that the technicalities or the language of the anti-trust law are violated in the one case and not in the other, but the principle involved is precisely the same in all of them; and if the combination which has been attacked can be broken up, then upon principle and upon grounds of public welfare every railway combination which has been effected in this country within the past ten years ought to be broken up; and with what result, to what end, to what good purpose?

Resolve these great systems of railway into their constituent elements, bring us back into the condition we were in twenty-five years ago. Why, the whole aim and tendency and effect of that legislative policy, if it could be adopted, would be not to perfect and develop our great railway systems of communication, but to bring us back to the disjointed and fragmentary and separated and warring elements we had ten years ago.

What ought we to do? Not merely recognize an inevitable tendency, but recognize the great public advantage of these railway combinations and then control them.

Let me put it in another way. Let me remind you of the fundamental difference which there is between combinations in the industries and in railway service; the difference is fundamental, gentlemen. It is fundamental in the constitution of society, and in the Constitution of the United States, when it comes to actual property, the things which we eat and use and wear, the products of human labor and skill; why, we do not want uniformity of price, if we can help it.

We want every producer to be perfectly free to get the most he can for everything that he has to sell and every purchaser to be equally free to buy everything as cheap as he can. That is, we want the utmost freedom of contract between buyer and seller in the exchange of property, and in the freedom of that contract rests industrial liberty. It may well be that those industrial combinations which have for their purpose temporary or permanent restraint upon that freedom of contract, either by limiting production or controlling prices, or anything of the kind, are against public welfare, and ought to be prevented if they can be. But when you come to railroad transportation, you have an entirely different situation. It is a public service. It is not a matter of contract at all, as I said to you the other day. You do not ride upon the cars as you buy flour, by contract, but you ride on the cars and have your property transported in the exercise of your political rights, and you do want uniformity, and if I am compelled to pay for a public service one sum and you get it at a lower sum, my political rights have been invaded.

I have been denied the protection which the Constitution undertakes to guarantee me, and if I could have my way I would have the prices of railroad transportation as certain and unchangeable as the price of postage stamps. I do not mean unchangeable from month to month or from year to year, but for the time being, as between man and man; and I would make it impossible for an Armour, or a Rockefeller, to get a car load of freight carried any cheaper than the humblest cross-roads merchant.

And to repeat what I said yesterday, for I am very much impressed with that, there is no influence which will so operate to bring down

railroad rates as the absolute maintenance of railroad rates. When you have the conditions which have heretofore prevailed, and which must prevail more or less under the competitive system, a railroad will yield to the powerful shipper, to great combinations, and hold up its rates as to everybody else; but when the big shipper, the largest company, can not get one mill off the rate, you have the approval of everybody to bring down the rate.

Let me put it in another way. What is at the bottom of our apprehension and our alarm as to these industrial combinations? Why, I suppose, I believe that it is the apprehension that they will so use their power and the degree of monopoly which they get by their combination as to extort from the public fairer prices than would otherwise prevail. Now, we can not reach the price of property; you gentlemen can not fix by legislation the price of sugar or cotton ties or flour or anything else—steel rails, for instance. So what do you try to do? You try to prevent the combination out of which those high prices result, because that is the only thing you can do. You can not go to the end you want to reach and control the sum which the consumer would pay, because that would far transcend your constitutional powers; so you try, and so the State legislatures try, to accomplish your result, or some measure of that result, by the indirect method of putting every obstacle you can in the way of combination. And I am not making any adverse criticism upon those laws, either State or national; but I want to contrast with that the railway situation.

When it comes to that, you can go right to the end in view and control the price. You have not got to resort to any indirect and unsuitable methods. The price of the thing in question is under absolute control. You can fix railroad rates. You can do it through the Commission, and you have absolute control over it, so that for the very reason you may be opposed to industrial combination you ought to be in favor of railway combination.

I am talking too much, gentlemen.

Mr. STEWART. We are very much interested, Judge.

The CHAIRMAN. Judge Clements, would it suit your convenience to be heard to-morrow morning?

Mr. CLEMENTS. Yes, sir; any time it suits the committee.

The CHAIRMAN. I have been notified that certain representatives of the railways will be ready to be heard on Tuesday, and if we can get through with the balance of the subject by that time we will do so. If not, we will give you such time as you need.

Mr. CLEMENTS. I certainly do not expect to take more than an hour and a half.

The CHAIRMAN. If it will suit you, we will be pleased to hear you to-morrow at half-past 10 o'clock.

Mr. CLEMENTS. Very well.

Thereupon, at 12.40 p. m., the committee adjourned until to-morrow, April 25, 1902, at 10.30 o'clock a. m.

WASHINGTON, D. C., *Saturday, April 26, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF HON. JUDSON C. CLEMENTS, INTERSTATE COMMERCE COMMISSIONER.

Mr. CLEMENTS. Mr. Chairman, I think I will be excused for speaking generally for a few moments, although it is not my purpose to go into the general question to any great length. There are some features of the general subject of regulation which ought to be referred to in connection with the practical details, which I suppose it is the object of the committee and of all of us to get down to, and only so far as I think necessary for a proper consideration of those will I refer to the subject in general.

The magnitude and importance of these questions and the difficulties and complexities surrounding them are not to be wondered at, and they are sufficient to caution anyone who approaches this subject, either from the standpoint of legislation or administration, against overconfidence in being able at once to formulate suitable and effective legislation in all particulars.

There are men living who were born before there was a mile of railroad built in this country, and yet we now have nearly 200,000 miles. It is a business which reaches everybody, touches every other business, and upon which everybody is more or less dependent. This immense property has been constructed under public franchises which have authorized the promoters to take private property for public use upon the theory that they perform a public service, and therein this business is distinguished in principle, fundamental principle, from the ordinary private business in which men engage without public regulation. Another feature distinguishes it, and that is that every railroad is of necessity to most people a monopoly. There are several roads for the same people at the trade centers. There were formerly more than there are now, since modern combinations have been perfected; but after all the great body of the people who need protection from injustice most are those who can patronize only one railroad.

Hence long since has grown up the idea that it is perfectly correct and necessary to regulate this business. It has more to commend regulation than many other things that have been regulated. From the beginning in this country it is a matter of history that public authority—legislative authority of the States, at least—has always regulated the tolls at grist mills, over turnpikes, and monopolies of that sort in which the public are interested, in which it was believed that the public was entitled to fair and equal treatment as between man and man. It is true that is a small matter now as compared to this business. It was an important matter, however, in the former days before railroads and the steam mills and merchant mills that have been brought about at trade centers; it was a vital matter then, and the public authority did not hesitate to regulate it on the sole ground that it was a monopoly, though a private business. In addition to the fact that the railway is a monopoly to most people there is the further

fact that it was created only by grant of public authority for a public purpose, to take private property in order to do the public business.

But I will pass from that question, because it is settled by judicial interpretation that there is competent authority and adequate reason, both, for regulation.

Sometimes when these matters are presented those who oppose regulative legislation speak of it as a great innovation, as revolution, as something unheard of, and therefore I have made this reference to these matters. For a long time the people of the country got along without any demand for regulating railroads, although they had the authority in the Constitution, formed long before a road was built, for that purpose, and upon which the present law was enacted. But the warfare between railroads and between rival communities and markets and products had not been made so sharp that there was necessity for regulation.

The roads were far apart; they were separate lines. They had not formed these aggregations, and great trade centers had not been built up by the facilities of the railroads, and therefore the necessity for regulation for a long time did not exist, and for a still further time the sharpness of friction and warfare and strife between communities and individuals in business and carriers was not such as to make imperative the demand for legislation such as resulted in the passage of the present law, which was enacted in 1887. But for ten years before that time it was a matter of public agitation. It was before both Houses of Congress for about that time, and this law was the fruit of that agitation and contention.

It is not strange that Congress at that time did not make a perfect law. It was a great field, a great subject; there were great interests, great difficulties involved. It was tentative and experimental, and two years later, in 1889, following the provision of the statute which requires the Commission annually to report to Congress and make suggestions as to needed legislation to perfect the law, certain recommendations were made, and Congress took it up again and amended it in several particulars, one of which was to include the shipper under the criminal provisions of the law. He was originally not under the criminal features.

Another provision then added to the law was one making it a crime for a shipper to underbill or misdescribe the products he shipped so as to cheat the railroads by marking a package a certain kind of freight which would go at a low rate, whereas it was a higher grade of freight that went at a higher rate. Those were two important provisions put in at that time at the instance of the carriers and recommended by the Commission. They thought that was just and went toward making an adequate law protecting both interests with impartiality.

Since that time there has been practically no amendment to this law; none, I might say, except the supplemental act which relates to the matter of taking testimony, which grew out of what is known as the Councilman case.

It has been now about thirteen years since the law was overhauled in the particulars to which I have referred. The Commission has in obedience to a requirement of the act year after year made suggestions as to what it thought was necessary to give effect to the purposes of the law, and, as you well know, has annually provoked a campaign of criticism, which has already been referred to on the part of those

who undertake to defeat the proposed legislation by charging the Commission with greed and anxiety for unlimited power. I will not waste time on that. I think the committee understands that this Commission, acting officially and under oath, has no interest in the matter except to endeavor to carry out its duties faithfully as time and experience show them to be. That is what it is trying to do.

I will present a few figures which relate to the subject in general, not for the purpose of arguing from these that rates are or are not reasonable, but for the purpose of emphasizing the extent, the magnitude of this matter and the questions involved in it, whether viewed from the standpoint of the carrier or that of the shipper.

The gross earnings of the carriers, the railways alone, not including the water carriers, for the year ending June 30, 1901, were \$1,578,000,000. This is equal to more than \$4,000,000 a day for every day in the year. It equals about \$175,000 an hour for every hour of the twenty-four in every day. The increase shown in these gross earnings from operations for the year 1901 over the year 1899 amounts to \$265,000,000, which is an increase in two years of over \$3 a head for every man, woman, and child in the United States.

The gross annual receipts amount now to more than \$21 a head for the whole population, or \$105 for every male adult, supposing there to be one in every five of population.

Now, of course a large proportion goes out as fast as it comes in, in the way of expenses of operation. Therefore I have said that I do not use these figures as applicable to the question of the reasonableness of rates, but I present them to emphasize the importance of the subject and of the questions that arise under it, because it is not to be conceived, in a business so large as this, conducted by so many people, where the carriers are left to fix their own rates, with reference to their own earnings, that the result of it will be that rates will in all instances be just and right and equal to everybody. It is impossible to conceive of such a state of things with such a result so long as humanity is what it is. Railroad carriers are made up of the same kind of people that the shippers are and every other class.

Mr. STEWART. What percentage on the supposed capital invested were those gross earnings?

Mr. CLEMENTS. The capitalization as it stands is about \$11,500,000,000. That includes bonds, stock, and every class of so-called capitalization.

Mr. STEWART. About what percentage would the gross earnings be?

Mr. CLEMENTS. The gross earnings would be something like 14 or 15 percent; but, as I say, something like \$10,000,000 go out for operating expenses. There would still be left over \$500,000,000 to go for other purposes. Not quite all of that is available for dividends and interest, however; but something like 4½ per cent is available for interest on bonds and dividends on stocks.

That is about what it figures down to in round numbers. After you take out expenses for operation, and taxes, and other matters that are proper to come out, there is still left some 4½ per cent, or between 4½ and 5 per cent, on the present capitalization, or about that. That includes the interest on funded debt and bonds, as well as the dividends on stocks. But the substantial ownership of railroads is largely in bonds. When you come to consider this, it is unfair to take simply the amount of dividends on the stock and say that is all they earn in

the way of profits, because in many instances the roads have been built by the bonds, and the stocks represent no investment. It is impossible to say what percentage is so.

It is shown in some cases that when a carrier has been paying a 6 or 7 per cent dividend for several years and it still has earnings that will permit more than that, some form of liability is issued. I have in mind now one instance of that kind particularly where the specific thing to which I refer was done—that is, there was handed around to every stockholder an equal amount in certificates of indebtedness to the amount of his stock, and the so-called indebtedness to draw 6 per cent a year. That differs only from a mortgage in that it can not be foreclosed. But it is one device to take up whatever might be left without reducing rates. It goes into this capitalization of \$11,000,000, or something over that, that exists now. Roads have been built within my own knowledge where the money that built and equipped them was paid in dollar for dollar to the amount of only the first-mortgage bonds. Then, in addition to that, the holders of the bonds were given an equal amount of stock, for which they paid nothing.

Mr. STEWART. That is substantially watered stock.

Mr. CLEMENTS. Yes, sir. There is no doubt much of that in this capitalization, and notwithstanding all of that and the many ways in which similar things have been done there is still available for the year 1901, including surplus, something like what would pay 4 to 5 per cent on the total capitalizations, covering stocks, bonds, etc.

The United States collects in customs duties, or did for the year ending June 30, 1901—the same year to which I have been referring—\$238,000,000; from the internal revenue, all sources, \$305,000,000; miscellaneous sources, \$41,000,000, making a total of \$584,000,000, which is little more than one-third of what the railroads collect in a year.

Still, I wish to repeat that I refer to these figures now only to show the magnitude of this matter and to illustrate and emphasize what I believe must be admitted by all, and that is that so long as the carriers doing this business, immense as it is, are allowed to fix their own rates upon their own considerations, looking to their own interests, as all men do—they are not peculiar in that respect—it is not to be assumed that every shipper will have a just and reasonable rate to ship upon. In the scramble for gain such a conclusion as that would be unreasonable. Hence the necessity for some middle moderate course to take care of both sides in respect to what is just and reasonable.

If either of you and I have a controversy about accounts, for instance, or anything, and we can not agree about it, you do not try the case; neither do I. We are all bound in the society of government, in order to guarantee justice to both sides and all, through the instrumentality of public tribunals—impartial, just, and fair. That is the theory of our whole Government. It is declared in the first section of the act to regulate commerce that every rate shall be just and reasonable, and that every rate that is not so is unlawful and forbidden. We are told that this did not create any new law; that it only disclosed what was common law. But if it was common law—and I concede it was, at least in respect to a reasonable rate—why was it put into a section of this act? Did that make it any more the law than it was before? Not at all. It was declared there for the reason that,

although common law, it was nothing but a beautiful but dormant principle which had never had substantial application.

The shipper could not go into court because he had been charged five, one, or several dollars too much on a single shipment and maintain a suit which would cost him a hundred dollars or more in the end, even if successful, and in contest with a great corporation, with its salaried lawyers, who are paid from one year's end to another to take care of all its cases. The individual could not cope with his adversary in such a fight as that and get redress, although he had a theoretical remedy at common law. I challenge anyone to find a recorded case in any court which ever gave back to a man one dollar because he had been charged more than a reasonable rate.

It is practically, I repeat, only a theoretical remedy. It is mockery to tell a man in such case that he has his remedy in court. It is worse than giving a man a stone when he asks for bread. He can not avail himself of it. The record shows he never did. The reasons why he did not are apparent to every man.

Well, why did Congress declare the principle of the common law in the first section of this act? Manifestly to give it some vitality. They followed that declaration up with other provisions intended to give it effect, for left alone it does not amount to anything more than a last year's spread-eagle declaration of a political party. We come together in party assemblies from time to time, and after sufficient "whereases" each denounces everything pretty much the other has done and seeks favor by popular declarations sometimes too general for practical realization. To leave the declaration that a reasonable and just rate is lawful and any other rate is unlawful, unsupported by some method to give it effect, is worth no more than one of these campaign declarations, practically. Hence it was followed up with all the sections, the whole of which simply provides certain things to be done to give effect to that fundamental declaration that rates must be reasonable and just. Now, they do not give effect to it. After an experience of fifteen years they fail to do it.

Of what use is it to require the carriers to file their schedules, publish and print them, and the Commission to collect reports and publish them, and to do all the other minutiae of the things required to be done in this act by the Commission or by the courts in the way of procedure, investigation, and things of that sort, if after all that is done it is still left where it was before, for the carrier to fix his rate, enforce it whether reasonable and just or otherwise, and there is nobody to hinder him?

I will not say that the public investigation of these questions has not been of value in general. It would not be true to say so.

I will not say that the varied and constant correspondence conducted by the Commission in respect to complaints of discriminations and unreasonable rates presented by letter to us and disposed of in that way has not been of benefit. We do the best we can to present to the railroads reasons why there should be an alteration here or there in such cases, some of which suggestions are complied with and some not. In the same way the carrier's side of the question is presented to the shipper. I will not say that all of this is utterly worthless or that it has not accomplished a good deal of improvement in conditions. After all, however, the substantial thing that was aimed at is largely a failure, and that is the correction of a rate that is wrong.

For what intent are individuals, associations, firms, and corporations authorized to file complaints with the Commission? For what intent is the Commission required to serve notice on the carriers complained against, institute an inquiry, have a hearing, and make a report thereon? It is the rate that is complained of. The rate is the basis of all of these controversies. Sometimes there is a question of discrimination in respect to such a matter as not furnishing cars to one shipper, while they are furnished to other shippers; but these are rather minor matters compared to the one continuing thing that is the subject of complaint, and that is the rate. It all goes to the rate. The amount you pay, or the amount which you pay as related to what other people pay, that is the controversy.

Now, it is not of much value to make a lot of regulations about one thing and another and still leave that question untouched. To regulate all around the one thing which is the cause of the trouble and leave that unregulated is unprofitable. This brings me to the question as to the authority of the Commission in respect to a rate when it is complained of and investigated, and I shall not dwell upon that. It seems to me that the statement of the whole matter suggests of itself that if there is to be any remedy it must be authority in some board—somebody. It can not be a court, because the Supreme Court has decided that the fixing of the rate for the future is a legislative act, and courts can not legislate under the Constitution. Therefore it must be done in one of the ways that Congress has said. Congress itself must fix the rate or authorize somebody else to do it in a limited way, if it is to be fixed at all.

Now, if the time has not arrived that we are convinced it is right and just under proper safeguards and limitations to give a certain limited authority to fix by review the rate which the railroads have first fixed, then there is no use to do anything more than has been done. I want to read to you the utterance of a distinguished railroad lawyer in an early case before the Commission. To get down to where the friction comes in a controversy is the best way to get at the question. A complaint was made of the unreasonableness of rates on coal in Pennsylvania, and Mr. Johnson, then and now, I believe, counsel for the Pennsylvania Railroad, which was a party to the case, said in his argument to the Commission:

You must fix this rate under the testimony in this case, and not upon the argument of Mr. Gowen; for while he gives you his experience as a railroad manager, that can not help you unless it is in accordance with testimony given under oath and under the sanction of cross-examination. Under the testimony only will you be justified in saying that these rates are so extortionate as to demand your interference. You must fix the rate to be charged. Mr. Gowen sees the difficulty which will beset you in doing this, and he therefore says that he does not ask you to fix rates, but only to say that the present one is unreasonable. He tells you that after you have said this, and after you have established the principle that before the carrier names his rates he must consult with the shipper, "these people" will come together and fix the rates themselves. That will not do.

If this Commission says that the present rates are unreasonable, they must say so because there is a different rate they have determined to be a proper one. It will not do for you to make a general finding and to say "The present rates are unreasonable, but we do not know what they ought to be. We can not fix them for you. You must agree upon them amongst yourselves." If unreasonable, say to what extent they are unreasonable; whether to the extent of a cent, or of many cents, or of a dollar a ton. Would it be proper for you to lay down an abstract principle that would lead to endless confusion in the application? That would put all at chaos. For Heaven's sake do not ever make the matter of the proper rates for car-

rying coal one to be regulated in a conference between the carrier and the shipper. If you have been convinced by these petitioners that the present rates are unreasonable and unjust, then say what the rates ought to be. This will be your duty.

I read this not for the purpose of offering an apology for the interpretation of the statute by the Commission as then constituted, with that recognized jurist, Judge Cooley, at its head, but I read it for the now more important purpose of illustrating the inefficiency of the act as since construed. For Heaven's sake, says this eminent counsel, if you condemn this rate it is because you have in mind an idea from the testimony of what is the proper rate. Now, when you condemn this, say what the other is; but do not turn it over to the shippers and carriers for another controversy, and another and another, with endless difficulty and confusion. Suppose the rate complained of is a dollar, to use an illustration which was used by a member of the committee yesterday, and the complaint is that it is excessive to the extent of 20 cents, and it is alleged that it ought to be not over 80 cents; that this is reasonable, and anything above it is unreasonable.

Then the Commission serves the complaint and takes testimony, and after a careful examination of several months and with several hundred pages of testimony of numerous witnesses, railroad officials, and all interested, takes into careful account all the circumstances and conditions that can be ascertained pertinent to the matter, and with deliberation—not with the haste of a court-house proceeding, but with all the time that is necessary to devote to it for a careful consideration and consultation—reaches the conclusion that 90 cents is a reasonable rate. If the shipper is entitled to a just and reasonable rate, he is entitled to it to-day and all the time. He is entitled to it to ship on, not for a cause of action to recover \$5 on some shipment he made last week, which he can not go after at all. How is he to do business on the chances of recovering back the excess? What he needs, and what the law declares him entitled to, is a rate which is just and reasonable which he may use and ship under.

Well, now, if under the present law in the case just assumed the reasonable rate stated was ascertained by the Commission and so found, all that could be done would be to condemn the dollar rate. If 90 cents is all that is reasonable the ninety-first cent is just as unlawful as the one-hundredth cent. The ninety-second is just as unlawful. And hence it was that the Commission, with Judge Cooley at the head of it, determined away back that when the Commission found that a carrier was doing any act prohibited under this law, ordering them to cease and desist from that act went as much to one part of a violation as to another, and that the inhibition applied as well in the case stated to the ninety-first cent, which was 1 cent above that which was reasonable, as to the one-hundredth cent, which was 10 cents above; and that the violation of law found was in charging any part of the excess, and therefore it was competent to make the orders it did make, which were as broad but no broader than the violation. So much for that. I have presented it not by way of criticism of any decision, but for the purpose of illustrating the necessity of ascertaining what is the reasonable rate, as well as what is the unreasonable one, so as to give effect to what is a shipper's declared right under this law.

Now, is that any great hardship? Doubtless you will be told by some of the gentlemen, but not all of them, whose property is to be regulated—that is, if it is to be regulated; I do not know whether it

is or not—that this is unnecessary. Of course they do not want to be regulated any more than they can help; that is natural; that is the way you would be, and the way any of us would be. We think we can trust ourselves to do justice to everybody, and, therefore, we do not need any regulation. That is humanity, but that is not society. Society can not rest on any such principle as that.

The CHAIRMAN. May I interrupt you with a question which is pertinent here?

Mr. CLEMENTS. Certainly.

The CHAIRMAN. I wish you would tell the committee if it was authorized to establish a rate what would be the elements of cost of transportation that would enter into your calculation in determining that rate. It is a comprehensive question, but I think it would be beneficial if some one with experience and authorized thereby to speak would tell us of all these elements of cost. What would you look to, what would you look at on the part of the carrier, in the expenses and all of that?

Mr. CLEMENTS. The Commission has in several cases made orders of that sort, and while I can not stand here and offhand repeat all the elements that have been suggested from time to time in all these various cases, I do recall some of them, perhaps the principal ones.

The CHAIRMAN. If you could give them to us I would like to have them all, as they have appeared in your experience, and if you would rather answer the question on Monday, after thinking it over, very well.

Mr. CLEMENTS. I can answer in a general way I think now, and if it occurs to me later on that I have omitted anything I may make further answer.

The CHAIRMAN. If you please.

Mr. CLEMENTS. One of the things that would be considered is the distance and the charges made for like distances on a like freight in other parts of the country. Another is the value of the freight, because you can not lay as much charge per ton per mile on a load of straw as on a load of gold dust, and you have to take into account the value of the property shipped, the risks incurred by the carrier, how much he would have to pay in the event it was burned or lost and he became liable for it. You would have to consider the weight of the article in comparison with the space it would occupy in the car, because the carrier can put perhaps three times as much or four times as much grain into a car in bulk as wagons or buggies set up or some agricultural implements which take a good deal of space and yet do not weigh so much—furniture and things of that sort.

And you must take into account the expenses of the road, its condition, its financial condition, so far as you can ascertain it. It is all fraught with varying details and difficulty; there is no doubt about that. And after all, the best that any railroad man can do now or pretends to do, the best that any other man or the Congress or a commission can do, is but an approximation, because there are so many varying conditions and articles. They must be classed, and yet if you classify at all you must put a lot of articles into every class that are not exactly alike in these respects to which I have referred—of bulk, weight, value, and space required in a car. Therefore it is that on some articles a road can earn less per ton per mile than upon others, because if it charges on the lower grades of freight the same rate per ton per mile that it does on the higher grades it would be prohibitory;

the articles would not be moved at all. Therefore they are bound to take into account what the traffic will bear, and by that I do not mean to say that they are authorized to go as high as it will bear; but in considering whether they will carry the article at all or not they must consider whether or not there is any profit to them after paying the expense of the movement of that freight.

All of these are matters that must be taken into account. The Supreme Court said, in the Nebraska case, I think, where a State undertook to fix the rates on all articles on all roads, that it must take into account the bonded indebtedness and the other indebtedness, of stock and its value, market value, what the roads earn. They must not be confiscated—that is, no rates must be made which would leave them no profit.

But to illustrate some difficulties about these matters. You say you must take into account the value of their stock. The value of their stock depends on what rates you will permit them to charge, and so you get into a circle when you come to consider it from that standpoint.

Mr. STEWART. To fix rates on agricultural implements, would not this be the process: You would first ask that if the company were engaged entirely in the transportation of agricultural implements whether the reasonable rates fixed would give them sufficient earnings on the capital invested? Would not that be the process?

Mr. CLEMENTS. I presume so, if that were all they were hauling, and yet of course that case could never arise in practice, because they all engage in carrying a great many kinds of freight.

Mr. ADAMSON. Under legitimate conditions their property may increase in value and they would be entitled to profits on real bona fide value whether it cost that much or not. Mr. Stewart asked you in regard to the cost. If its value increased, they are entitled to the bona fide value, are they not?

Mr. CLEMENTS. Yes, sir.

Mr. ADAMSON. Sometimes that happens without watering stock?

Mr. CLEMENTS. Undoubtedly.

Mr. ADAMSON. In all kinds of property?

Mr. CLEMENTS. Undoubtedly. I would not think that the original investment was the only thing to go upon.

Mr. STEWART. My question was this: In order to arrive at whether a rate was reasonable on agricultural implements, would you not have first to ask that if the company were engaged entirely in the transportation of that article, whether the rate would give them a reasonable earning on the capital invested?

Mr. CLEMENTS. I presume so. If that were all they were doing and you found out the basis upon which they were entitled to earn, whatever that might be, that until they had earned something more than a reasonable return you would not be authorized to reduce it.

The CHAIRMAN. If fixing or estimating value of plant and you allow any sum for the franchise, would you consider the value of the franchise?

Mr. CLEMENTS. Well, Mr. Chairman, I hardly know how to answer that question. It is probably one that has never been considered by the Commission, certainly not within my knowledge except as the franchise may be bound up with the tangible property.

Mr. COOMBS. For instance, in California the franchise is taxed; it is considered taxable property. It is taxed very heavily, so much so that

the railroads have been fighting it; but I think it has been established that it is taxable property. Would you consider that an asset?

Mr. CLEMENTS. I should say the road was protected in this, that before you undertake to reduce their revenues you consider what tax they have to pay on their franchise and their property and on all these things they pay on.

The CHAIRMAN. In this estimate of value, would you take into account what is known as good will?

Mr. CLEMENTS. Well, Mr. Chairman, I would not know how to measure that in any way except as it expressed its value in the value of the property. I reckon that an element that enters in; I would not know how to measure it, how to estimate it separately. It shows itself in the value of the stock, whatever there is to that. The road that has a good deal of good will, a high reputation and high standing, has high-priced stock.

The CHAIRMAN. But there are many persons who insist that stock and bond valuations are not proper criterions to be looked to in performing the duty of fixing a rate.

Mr. CLEMENTS. Not alone, no; I agree to that.

The CHAIRMAN. I want to know whether or not you can tell me whether these matters of franchise and of good will are, to your mind, or would be to your mind, in performing this duty, elements of value to be considered in considering the aggregate value of the plant?

Mr. CLEMENTS. I do not think they are entitled to any consideration except so far as their value is shown in the stock and property itself.

The CHAIRMAN. But if you abandon the method of ascertaining value of taking stock and bonds, if you abandon that method, then would you not consider the separate elements of value?

Mr. CLEMENTS. Undoubtedly.

The CHAIRMAN. Would that include, in your mind, then, value of franchises and value of good will?

Mr. CLEMENTS. It is rather a new question to me; but I suppose if you eliminate the consideration of the stock and all questions of that sort you would appraise the property upon the same terms that you would other property, and in that way the good will necessarily shows itself in the value of the property. The franchise and the property are bound up together; it is all one earning thing; speaking generally, one is not available without the other—that is, for railroad purposes.

The CHAIRMAN. There are a good many persons who do not agree with you, who say that in making estimates of this kind, ascertaining value of this kind, the value of the franchise, the value of the good will, are not to be considered. I have read much on that subject. Now, I would like to know if you were to be intrusted with this power of fixing a rate, where you must consider value of plant, whether to your mind these particular elements of value are to enter into your computation?

Mr. CLEMENTS. I do not see how they are to be left out on that basis, if you abandon the stocks and go to the tangible property.

The CHAIRMAN. Excuse me for interrupting you.

Mr. CLEMENTS. That is all right; it is rather a novel question to me, but speaking on the spur of the moment I do not know of any better answer to make than that. Of course if the Commission had ever been intrusted with or assumed that it had the power to make rates, initiating rates on all traffic, we would have been confronted with that

question long ago; but never having assumed that power, and only believing that we had the power to correct the rates complained of in particular instances by review, that question has not come up.

Mr. STEWART. The railroad companies in making up their assets upon which they calculate their earnings do not value their good will or their franchises at all, do they?

Mr. CLEMENTS. I do not know that they do. They take into account their stocks and bonds and so on.

Mr. STEWART. And therefore the Commission, in finding whether the rate was just or unreasonable, would not have to take into account the question of what their franchise was worth?

Mr. CLEMENTS. I think so, on the basis suggested. The chairman's question had reference to eliminating a lot of those things.

Mr. STEWART. Do not the railroads eliminate it now?

Mr. CLEMENTS. But they take into account their stocks, and the chairman's question was based upon the idea of eliminating that and going to the value of the tangible property itself, ignoring the stocks and bonds and all those things, and it was in that view I said what I did.

The CHAIRMAN. In fixing a rate would you consider the fluctuation in volume of business from one year to another; or, in other words, in fixing a rate in what was spoken of yesterday as a fat year, would you take into consideration the fact that last year had been a lean year or next year might be a lean year?

Mr. CLEMENTS. That requires me again to say that in respect to all these matters, whether we consider rates originated by the carrier or corrected by a commission or arranged by a railroad association, the best that can be done is approximation, to deal with generalities and approximate what is just and right, all things considered. There are too many details, too many particulars, too many differentiating circumstances of time and place and value, to make it possible to do it in any other way except upon approximation.

Now, that brings me to say what I think would be a right and proper thing in regard to these fluctuations of which you speak, and I am very glad you asked the question at this point, because it will enable me to refer to some things which I was going to defer but might as well speak of now.

Undoubtedly, any substantial, important change in these matters is one that would be considered, and ought to be considered in a determination of what is reasonable and right, because you can see at a glance by the figures that I have referred to here that whereas the earnings for the year 1901, ending June 30 of that year, were \$1,578,000,000, for the year 1899 they were \$1,313,000,000. Making a difference of \$265,000,000—about as much as you collected in the whole year from the tariff on imported goods. The difference alone, that is, the increase shown in 1901 over 1899, was \$265,000,000.

Mr. CLEMENTS. Whereas the receipts from customs were \$238,000,000, what did you ask?

Mr. ADAMSON. Were the disbursements for 1901 more than they were in the year 1899? They are somewhere near a fixed ratio.

Mr. CLEMENTS. The increase of expenses was \$166,000,000; the increase of receipts over earnings was \$265,000,000.

Mr. ADAMSON. There is somewhere a fixed ratio, then?

Mr. CLEMENTS. Approximately so, somewhat. These figures show

\$100,000,000 more increase in the earnings than there was in the expenses in these two years.

What I was about to say in answer to the chairman's question about fixing rates in reference to fluctuations in earnings and so forth was this: A few years ago the tonnage was not near so great as it is now, and the earnings were less. Expenses were less then than now. Naturally they are more now, to handle a bigger volume of freight. But you can not vary the rate; neither can the Commission or the railroads vary the rate with every monthly or frequent fluctuation, or one that affects some articles and does not affect business generally. Reasonable stability in rates is desirable alike for the public and the Commissioners. Rates can not be stable at all, whether made by the railroads or a commission, on constant fluctuating changes in the value of property or the volume of business. That is another case for the exercise of reasonable, fair judgment, so as to arrive at something that is approximately just.

I remember a few days ago seeing in the newspapers of Washington that the cabmen of this city had applied to the District Commissioners for authority to increase their rate of 25 cents for hauling a person a certain number of blocks, and they assigned as a reason therefor the fact that the price of hay and corn had gone up so it took more to feed a horse now than before. Another reason they assigned was that whereas for hauling a person they were entitled to charge the fixed rate of 25 cents for so many blocks, and 50 cents for so many more blocks, that in some instances they were required to go 10 blocks after a man, and then to take him to a place that he wanted to go, the depot, for instance, and then they would have to go back again to their stand, and that in view of the actual distance traveled, and in view of the greater cost of feeding their horses, they ought to be allowed to charge a higher rate. But that request was refused by the Commissioners, the authority of this District, acting under the law of Congress. You can not lay down an exact rule about such matters except the general rule of reasonableness and fair play.

This regulation of cabs and street cars in Washington is interesting in connection with the contention that to give the Commission the limited authority to review the rates made by the carriers, for the purpose of correction, not creation, is said to be revolutionary, radical, unreasonable, and dangerous, and yet right here in this community of 300,000 people, the capital of the United States, by authority of Congress the Commissioners of this District are authorized and that without a hearing to fix a schedule of rates for the cabmen of this city, to say what they shall charge you and me, so as to protect us when you get off the car at the depot, for instance, against an exaction of \$1 where the rate ought to be 50 cents. Now, if this little business in this city, as between these men who stand around in eager competition, lifting their hands to you, saying "Here's a carriage," "Here's a carriage," bidding for your business, if under that competition, I repeat, in a little matter like this there is justification for the arbitrary fixing of a schedule of rates on this business, how infinitely more important it is in respect to this greater business of the railroads of the country that the individual, the shipper, should be protected in the rates he pays.

Now, if we take the advice of those who say that the fixing of the rates by review and the correction in promotion of justice, of a rate

which the carriers have made is revolutionary, confiscatory, destructive, radical, and therefore not to be permitted, are we not straining at a gnat and swallowing a camel when we set up this regulation for the cabmen and street cars of this town? You regulate their fares. Is there any possibility that you can be so badly hurt and oppressed by the rates of these local carriers here where they are in competition as that the man out in the country, dependent on one road for transportation, will be subjected to a worse injustice? Take the man who lives on one road and has no choice as between roads in respect to moving his crop. He may sue in the courts for an excessive charge, we are told. Well, one judge—a circuit court judge in Iowa—has decided that the law fixes the published tariff rate now under this law as the rate conclusive, and if you have paid the published rate and then complain that it was unlawful and sue for the excessive part of it in a court, that you can not recover it because the law has said that the carrier shall make the rate and publish it, and when published he shall collect it.

Not that he may do it. It is a crime for him to remit it after he has published it. He is guilty of paying rebates if he does so; he is guilty of a criminal offense if he takes less than his published rate. He is not only permitted to collect it, but he is required to collect, and he is a criminal under the law if he does not collect it. And yet shall the law be left in such shape that a man must go into court and complain that he has paid the rate which it was a crime on the part of the railroad not to collect after it is published? According to the decision referred to there could be no recovery in such a case if the rate collected was the published rate, however unreasonable. But if this decision be erroneous and the amount of excessive rates collected be sufficient to justify suit, now who is it that can collect in a case in court. Take the grain men of the West or the cotton men of the South, who grow the corn or cotton, as the case may be. At the end of the harvest, or soon thereafter, these men sell their crop to a local buyer. He sells it to Mr. Councilman or Mr. Richardson, or some other one of the great grain dealers in the West, or, if cotton, to dealers in the South. And what do the local men pay for it?

They pay a price which is based upon what he is authorized by the person with whom they are dealing. That is fixed by the market price of the grain in Chicago or in the markets of consumption farther beyond in the case of grain, and they get that price or thereabouts less the freight rate that is necessary to take it there. The grain man sells at a price which is based on the published rate, and suppose after that a complaint is made and upon investigation it is found by the Commission first, and then the courts, that that rate was unreasonable by 3 or 5 or 2 cents. The shipments have all been made, the crop has been moved, practically, and the bills of lading have been made out in the names of the dealers, not the farmer, the man that bought the grain shipped it.

In the bill of lading his name only appears. He paid the freight. The farmer did not pay it; the cotton man did not pay it; each bore the burden of it, however; but the dealer paid the freight, having shipped the grain and cotton. Now it is determined that that rate was unreasonable by two or three cents, and the court sustains that finding. Who is it that recovers back the difference, supposing anyone can? It is not the farmer, who has parted with his crop based upon the higher

rate. He has no standing in court or before a commission or anywhere, because he had no transaction with the railroads. He did not ship anything. He has no bill of lading, he has no expense bill showing what he paid, and he has no standing anywhere, and yet he is the loser. But who can recover in such a case? The middleman or the dealer who bought it and paid for it at the lower price. He has the freight bill, the bills of lading, and if anybody can recover he can. He has already had his profit in the transaction.

These are illustrations to show that there is no protection, neither can there be any protection, to those entitled to and needing it in these matters unless you fix the reasonable rate beforehand, so that he need not pay more than the reasonable rate nor sell his products on the false basis of an import rate. If he has no remedy until he has shipped, then he has none at all, practically. Hence the necessity of fixing the rates for the future.

Now, is it so unreasonable that such a thing should be done? Not for a commission to sit down and write out and promulgate all the rates for all the carriers. That is done in a good many States, as you well know. There are 20 States in this Union now whose commissions, or public authority of some sort, fix rates for the carriers in respect to State shipments. Within all these late years I remember only three or four cases that have gone to the Supreme Court (one was from Nebraska, one from Texas, and one probably from South Dakota) in which the carriers have charged that the rates fixed by the State commissions were unreasonable, confiscatory, and unlawful.

With all these 19 States—I included above Virginia, which has just adopted a provision in its new constitution, although the constitution is not yet in force—there are only a few cases where the railroads have had occasion to resort to the courts to stay the rate-making power of the States on the ground that it was unreasonably or unjustly exercised.

Now, the record does not show any rash haste or disposition on the part of any public rate-making power to make unreasonable or unjust rates, where they have the full power to make the rates out and out. There is no such thing as that suggested in any of these bills or in any reports or suggestion of the Commission at any time. It is not an authority that anybody need covet for the purpose of exercising it. It is full of difficulties, but after a great deal of thought and experience about this matter, I respectfully submit that it is the only way in which you can protect the shipper or producer, because to give him a remedy of back action to recover either puts it in the hands of the middleman who has no right to recover, as he has the only standing in court and the producer has none in the one case, or else it requires such a multitude of suits to recover little amounts that it is more expensive than it is to submit to the wrong and bear the loss.

So you will find, when you turn this question over and look at it from every standpoint as long as you will, that there is no way where carriers make unjust rates to protect the other side except to correct that rate, not simply by condemning the one that is wrong but by substituting the one that is right.

Now, where is the hardship in this? The shipper is entitled to a reasonable rate. The carrier is entitled to a reasonable rate. Each one is working for his own interest, naturally and properly. The carrier says that he is capable of making a rate that will be just to his patrons, that he will not oppress them; but can you leave the shipper

in his hands with safety? Human experience says no. You will not permit the carrier to make the rates. Now, what else does the conscience and the mind go to except some natural, reasonable, fair-minded course such as we resort to in all other matters of controversy? That is, to have a court—which you can not have in this case, because it has been decided that this is a legislative power when it relates to the future. That eliminates the courts.

Mr. STEWART. New Jersey has no public debt or no State tax whatever. Her entire revenues are gathered from the railroads. Our railroad commission fixes future rates, does it not, on the railroad traffic in that State?

Mr. CLEMENTS. That may be; I am not aware of a commission in that State.

Mr. STEWART. Has there ever come a complaint to the courts on account of the unfairness of those rates?

Mr. CLEMENTS. From New Jersey?

Mr. STEWART. Yes.

Mr. CLEMENTS. None that I have heard of and call to mind.

Mr. STEWART. If that is so in New Jersey why could not this commission fix rates without difficulty?

Mr. CLEMENTS. I must confess that all of these matters are important and that there is more or less difficulty; but this is done, and I see no other answer but that it will be more fairly done by an impartial tribunal, whether you call it a commission or a congress, that has power to do it, than to let it be fixed by either the shipper or the carrier in his own interest. Of course, it would be wrong for the shipper to make the rates, because he is an interested party. So, too, why should the carrier make the rates? He is an equally interested party. Now, if the railway is just like a wagon and a horse, if it is nobody's business, and every man should make his own trade and do the best he can, then leave it where it is; but if there is anything in the doctrine and declaration that the shipper has certain rights on the ground that this is a public service, under a public franchise, which is put beyond controversy by the decisions of the Supreme Court, and now admitted by all parties, then it is a different case, and why should there be any question that there should be some power to make an adequate and just correction of the rate made by the carriers when, upon due inquiry, it is found to be wrong?

Suppose the Commission should be eager for the exercise of power, and go pellmell, making rates so as to injure the roads, the roads would do what they have done in the Texas case and in the Nebraska case and in the Dakota case—ask the courts to protect them under the law against an unlawful rate which the Commission has made. They have equal protection under the law. It is not confiscation; it is not a question of that sort. Where can the injured shipper or producer go and secure like protection with like promptness? As it is now it reminds me of a game some boys were playing as I passed along the road once. They were playing some game and one boy asked: "What is the rule of this game?" "Every fellow for himself and the devil take the hindmost," replied one of the boys. That is the situation in which this business, immense as it is, is left in the present scramble, for two reasons—first, there is no power to correct the published rate, and, second, no practical power to prevent deviation from the published rate whereby one man gets a rebate while the general public does not.

Now, these are the two principal defects of the law. It would be unreasonable for the shipper to dictate the rates, and it is equally unfair for the carrier to do so without the power of correction somewhere.

The Supreme Court has said in one of these cases that was before it, in which it did not approve the conclusions of the Commission in the long and short haul feature, that the carriers have the right in the first instance to make their rates, not finally, but subject to review by the Commission and the courts. The principle is recognized. The court said in the very case in which it held that the law did not authorize the fixing of a rate by the Commission to take the place of the condemned rate, that Congress had the power to regulate by fixing the rates itself or to delegate that authority to the Commission. It having done neither, the authority was not found in the act by implication.

Now, as I say, the courts are open; carriers have the same protection there from an unreasonable rate made by the Commission that everybody else has for their various rights under the law. The question was asked yesterday, and probably one the day before, in respect to the exercise of this authority in regard to several rates or several classes between one State and another, different States, and if there was not some way in which to limit the jurisdiction of the Commission in a particular case to some smaller scope, some smaller field. I appreciate the motive of that suggestion as having in view a possible compromise by which to get something in the direction of what is right. But I have thought a good deal about it, and I see no practical way in which a limitation of that sort can be applied and make the law efficacious. For instance, the remedy ought to be as broad as the evil, and in some cases the matter complained of has been the adjustment of the rate on all classes or on a large number of them.

Take, for instance, the action of the official classification committee at the first of the year 1900. Alleging that the expenses of operation, railway materials, bridge materials, cars, and the things that go in to make up cars, and labor, cost to the roads more than they had previously cost. They said, "We were justified in making more revenue." It was not a blind way of going about it; there was no deceptive way of going about it. What they did was to bring their classification committee together, and that committee represents all the roads of the trunk lines from the Ohio River to the Great Lakes, covering a number of the most populous and strong States of the Union, in which the classification applies. They came together and fixed up classification No. 20 to take the place of classification No. 19, and they increased the rates on something like 700 or 800 articles, by taking them out of the fifth class and putting them into the fourth class, out of the second and into the first, and so on—that is, from one class to another.

We received several hundred complaints within a week about this one matter. The roads fixed upon these numerous and substantial increases, so far as the public was concerned, without any notice. I do not mean to say that some isolated shippers here and there did not know that they were going about it, but there was no official notice; there was no notice to the public; there was no right on the part of any shipper to be heard. I do not say that some shippers may not have been permitted from time to time to talk to some member or members of the committee and present their views, but there was no public right for any man to enter and make suggestions about it. It was a transaction

wholly within themselves, except so far as they, or any one of them, permitted some shipper to talk about it to them. They made these increases, averaging about 31 or 32 per cent on all of these articles by this change of classification. Up to about the 1st of March following the complaints had been so vehement and so numerous that they revised their work and so changed it as to reduce the increase to about 20 per cent above what the rates had been before.

Now, what would you do with that kind of a transaction if you had limited jurisdiction? If you were limited to the consideration of a complaint on a particular commodity between two places, what would you do? They substituted the higher classification for no purpose except to raise the rates. We called upon them on the complaint of these hundreds of shippers, the members of the committee were sworn, and they testified that their reason was to get more revenue, and in doing it they looked for the things that would bear the increase best. Do you suppose there was no wrong in all of that to any shipper anywhere? If they are incapable of doing a wrong thing, if in the performance of their work in their own interest for gain they are incapable of doing injury to the shipper, then we need no law; but if in all this multitude of things they did—upon which three months later they confessed that they had done wrong so far as to correct a whole lot of it, and do you suppose there was no imperfection left in it, no injustice left?

If there was there ought to be a remedy for it. If they are incapable of doing wrong, then there is no remedy needed. But assuming that there was any injustice done, how can you get at it except to apply a remedy which is as broad as the act which they did? Now, what has followed? Under the law as it is complaints can be made. These several hundred complaints I speak of were by telegraph and letter. They came all at once, a flood of protests against it. We took testimony a day or two from the people who made the complaint and the carriers, and sent it to the Attorney-General on the request of some of the complainants, who insisted that the thing done was a violation of the antitrust law. The complainants wanted to proceed against the carriers that way, and it was upon request we sent it there. He stated in a written opinion that it was not a violation of the antitrust law. So you see how they were able to act together. There were about 65 roads that were included that used that classification. The committee was composed of fourteen or fifteen members, and they got together and revised this whole schedule of their rates.

Mr. STEWART. Did he admit it was a violation of the interstate—

Mr. CLEMENTS. He did not say; he said in substance it was left to the Commission to do what it could under the interstate-commerce law.

Mr. STEWART. Did he discuss the Sherman law?

Mr. CLEMENTS. Yes; but he did not discuss it except to say that this testimony did not show a violation of the Sherman antitrust law, and, therefore, these complaints were thrown back to seek protection under this law or submit. Several of them filed formal complaints. Proctor & Gamble, of Cincinnati, complained of rates on soaps. I wanted to go into that a little—not the merits, but the nature of the controversy merely—to answer the question that was asked the other day; but it is 12 o'clock now, and you may wish to adjourn.

The CHAIRMAN. You can go on now or go on on Monday, just as you please.

Mr. CLEMENTS. Very well. Proctor & Gamble are soap manufacturers near Cincinnati. They filed a complaint because the soap had been changed from one class to another, raising the rate. And the Hay Association of the country filed a complaint, which was to the same effect. Suppose the jurisdiction of the Commission was so limited. As suggested, Proctor & Gamble had complained of the rate from their factory near Cincinnati to Chicago, in order to correct the rate on soap to Chicago, and then they had to file another complaint on each road leading to Cleveland, and another on each road leading to Buffalo, and so on to every part of the country. What the carriers did was to raise the rate by raising the classification on soap on every road using that classification, which was sixty-odd, not only between Cincinnati and Chicago, but between each place and every other place in that territory. Now, you see at once that the only possible way in which you can deal with the question to give any relief in a lifetime is to deal with it just as broadly as the carriers do.

If complainants are entitled to any relief, they are entitled to relief as broad as the wrong done. Take another case which was tried a good many years ago. It is the one in which the Supreme Court decided that the Commission had no power to fix a rate. The carriers were complained of by the freight bureaus of Chicago and Cincinnati on account of the rates from those two cities to certain points in the South, and it was shown among other things in the investigation as follows. I read now from the findings of fact by the Commission in that case:

At the convention of the Eastern and Western lines in 1878 it was announced by Mr. Peck, general manager of the Southern Railway and Steamship Association, that the Western lines "concede that the transportation of manufactured articles into the territory embraced by the association should be left to the Eastern lines, and to undertake by prohibitory rates to prevent such articles from Eastern cities reaching association points over their lines." Accordingly a basis of rates was then adopted, by which rates on the Western lines for articles peculiar to the East were to be at least 10 cents higher than the rates on the Eastern lines, and rates on Eastern lines for Western products were to be at least 10 cents higher than the rates on Western lines.

Now, they fixed up a whole lot of agreements there. They declared openly then—that was before there was any antitrust law—that their object was to divide the traffic between the Eastern lines and the Western lines, and there are numerous provisions in the agreement here shown to that effect, declaring, for instance, that the lines leading through the Ohio River gateways shall exact full locals and not carry at other rates in respect to any shipment that would come to them over a line that would not agree to those rates. They made a line from Buffalo down by way of certain towns to Pittsburg and Huntington, W. Va., and they said that whatever originates east of that line must go to the South by the Eastern roads, and not the Ohio River crossings; and whatever originates west of that line must reach its way to the South by the Ohio River gateways and not by the Eastern lines. And they fixed penalties, and they fixed it so it took unanimous consent to change the arrangement, and that no rate should be changed by the individual roads; that each road should collect full locals in certain cases; and then they fixed another line in the South which could not be crossed by these respective carriers, in the transportation of this great traffic, so divided.

All that is cited in this case, and they made it apply to the six

broad classes of freight, general merchandise, etc. The declared object of that was set forth then—because there was no law against it then except the common law—and they continued that right on down until the decision was made in the case of the Joint Traffic Association, and the same adjustment continues to this day, because this decision of the Commission was not put into force on account of the fact that the Commission undertook to find and fix the reasonable rate, and not only found that the rate the carriers had made was unreasonable, but substituted the other rate for it, and those rates fixed by the carriers were made on the basis shown confessedly 10 cents higher one way than the other way in order that the traffic might be divided for the declared purpose of allowing all of the carriers to get the greatest net revenue out of the business as a whole.

These rates were made for that purpose on that basis, and it was these rates that were challenged by the freight bureaus of Chicago and Cincinnati, and after the question was tried by the Commission the Supreme Court never passed upon the question; neither did the circuit court of appeals pass upon the question of the reasonableness of the rates found and prescribed in the order made, except it was beyond the authority of the Commission to make it, because it fixed the rate for the future.

There is a case where they came together in association and fixed up the division of the territory, both North and South; they said what should go by the Ohio River and what by the Eastern lines down into the South, and it was declared to be for the object of allowing the Western lines to carry to the South such things as hay and grain and the products that were peculiar to the West, and to allow the Eastern roads to carry imported goods, merchandise and things that were peculiar to the East.

Now, the former conditions as to place of production and manufacture have changed. Manufacturers have gone to the West. Chicago has become one of the greatest manufacturing cities, and yet she is farther away by the rate than New York is from these towns in the South. So this adjustment has not been changed in any material respect in twenty years, and it was built for this declared purpose by the members of the old Railway and Steamship Association and their associates, the railway carriers in the East and the West. It is all set forth here. And yet it is said because the rates which they declared should be higher from the West to those places in the South than from the East, in order to effect this division and obtain for all of the carriers the greatest net revenue out of the entire business, the thing which stands to-day—the agreement, of course, is gone—the agreement is not in writing anywhere any more as it was, but the practice appears to be the same to-day; at least, the rate adjustment is the same. And now the distance is disregarded. Changed conditions are disregarded.

The declared purpose, then, the principal thing, then, as they avowed, was to get the greatest net revenue to themselves out of the traffic. They had been having rate wars and contests, and so when they settled that they divided the country into territories, and they said in effect, "You take that and we will take this." Now, where does the shipper come in—the producer, the community? If a thing of that sort is done for the sole purpose of gain to the carriers and there is no remedy to correct what they do if found wrong, then there is no remedy for the shipper. If they do any wrong in a matter of that sort, the remedy

should apply to what they have done. They did not do this by piecemeal; they did not do it on one article between two places; they did it in respect to the whole territory on six classes, on that adjustment, and which, I repeat, is the same to-day as it was then, substantially fifteen or twenty years ago.

Take the rates from Meridian, Miss., to Chicago, a distance of 723 miles. On the first class the rate is 1.34. From New York, a distance of 1,142 miles, it is 1.24; 10 cents less from New York than from Chicago, the distance being much greater from Chicago. Distance does not alone control in these matters, but here are the plain declarations of the purpose in this matter, and it was shown that it was with a view of dividing the territory, dividing the business, suppressing the competition so as to get the greatest net revenue for each of the carriers out of it, to stop fights. That was the adjustment. It was made with the purpose of permitting the greatest revenues to the carriers. Now, where is the shipper's voice in that?

Mr. STEWART. Would not that condemn, then, the system of pooling?

Mr. CLEMENTS. I think so.

Mr. STEWART. That would be an argument against pooling.

Mr. CLEMENTS. I think so. I have different views about pooling from the views of our friend the chairman. We hear now about the progress we are making, and that we are finding out that many of the old notions we used to have are untrue; they are blasted and found groundless, and we hear that they ought to be overturned. I do not believe in it all. This is a progressive age, but I think sometimes we lose sight of old principles which never change, and that we would ruthlessly and thoughtlessly overturn them to our hurt if we are not prudent. I bought a book once, and on the first page I found, "Times change and men change with them, but principles never." I do not know whether it has application to this case or not; but I do know that for hundreds of years the courts, without as well as with statutes condemning monopolies, under the English law, the common law, as transplanted in this country founded on common justice and common sense, and the perfection of wisdom, which is what we used to understand law to be, have found and declared that monopolies are injurious to the public; that human nature was yet too imperfect and too selfish to be trusted.

When we have aggregation and monopoly, so that the consumer and producer are in their hands, we can trust that they will deal justly with them without law. It would be a long stride in my judgment at this time for Congress to say—that is for you to consider, however; but as the question has been presented here it is not out of place I suppose for me to say—it would be a long step in the way of progress either in the right or wrong direction, and I think it would be the latter, to say that which to-day in the eyes of the common law is condemned on the ground of public policy, and it would be unlawful without a statute against it; not only that, but it is condemned by the act to regulate commerce passed fifteen years ago, and made a crime; not only that, but it is condemned and made a crime by the Sherman Act of 1890 and made a felony to do these things—that we now go with one plunge, by one bound clear over the fence, reverse the order and say it shall not only be permissible, that it shall not only not be against the law, but it shall be lawful; it shall not only be lawful when you have done it but the courts of this country shall be set up

to give it force and effect, so that which to-day is a crime must be set up and enthroned to-morrow as a thing to be commended and enforced.

Now, that is a long ways to go at one leap. I think there are other ways to stop these evils.

What would pooling do? What do the roads want with it? Does anybody suppose for one moment that they want it for any other purpose except to increase or make more sure their revenues. If they are greatly concerned about the discriminations between the shippers they have it in their power to stop them; but you are told one road can not stop it and let another one go on. There is a good deal in that. But there is a way, I think, to correct that practice. I do not think it will be questioned that the primary object the roads have in bringing about pooling is to enable them to increase their net revenues. How? They say in part by eliminating the competition between themselves.

If they divide the business then they won't have to have soliciting agents and other agencies which they now maintain; and you must see at once that the economy in saving to the carriers that there would be in respect to these minor matters would be comparatively immaterial. There would be some, undoubtedly, but it is no great factor in the matter. The principal things in view, I apprehend, are, first, that it would enable them to get rid of the payment of rebates, making cut rates, etc. Therefore they would then collect the published rate from everybody, and I do not think that it is without reason to apprehend that they would do what they have done in the past; that they would undertake to get the greatest amount of net revenue that they could out of the business, and therefore they would eliminate competition and put up or at least hold up rates. Why should they not? Does not every man put up rates when he can in his business; does not every man take about all he can, whether he is selling shoes or hats or wheat, whether he is a farmer, a merchant, a manufacturer, or a railroad man?

I am not indicting the railroads. Their management is made up of the same kind of men as that of every other business. But their business is peculiar. The public is in a measure in their hands, and hence the trouble. They want more revenue. They do not think they get enough. They would have it in their power to get more. Again, I have not seen a pooling bill around here yet anywhere that did not authorize them to contract not only with one another, but common carriers generally, including, of course, water lines. I have not seen any limitation in any bill that railroads should only be authorized to combine with railroads. They may combine with common carriers without limit. The Congress will appropriate, probably this session, millions of dollars to clear out and deepen the water in the rivers and harbors, to promote commerce mainly, and will at the same time authorize these already great financial giants to go on with their combinations and put not only the railroads that were in competition heretofore together, not connecting, but competing lines, into one management, one system, and then to go to the lakes, the rivers, and harbors, and combine with the steamer lines. These are great questions, and sometimes it seems like we are disposed to go too rapidly and too blindly.

Mr. COOMBS. Do you think the Government would have a right to regulate fares on steamships?

Mr. CLEMENTS. I should think so. In fact, there is no limitation in the Constitution if they are engaged in commerce between the States.

Mr. COOMBS. The question of eminent domain does not enter.

Mr. CLEMENTS. The constitutional provision is to regulate commerce between the States and Indian tribes, etc.

Mr. COOMBS. That is regulating commerce; I understand that.

Mr. CLEMENTS. That is what I mean. Is there anything that would hinder Congress from regulating the lines on the Mississippi River?

Mr. COOMBS. I do not know whether it is necessarily implied in the power given to Congress to regulate commerce.

Mr. CLEMENTS. I supposed it was. I have always supposed it was. Congress has not undertaken to do it in respect of rates for the manifest reason, I suppose, that the river is anybody's highway and not that of a monopoly.

Mr. COOMBS. That is the difference between a railroad and a river. The railroad can invoke the sovereignty of the State and get a right of way; it is a quasi public institution.

Mr. CLEMENTS. If the public authorize it; yes.

Mr. COOMBS. Yes. Now, the river is open to everybody, but it is opened and controlled by the United States. The same element of sovereignty, you might say, does not enter. The railroad is exercising a sovereign right when it gets its right of way.

Mr. CLEMENTS. Yes.

Mr. COOMBS. Now, that same rule does not obtain, you might say, in reference to the right of a man traveling on the highways of the sea, on the water.

Mr. CLEMENTS. Well, the Government has the control of all these waterways within the country and the harbors, and it is expending a great many millions of dollars to make them available to commerce, and now is it going to give an affirmative authority here to enable the carriers by land to make such contracts with the carriers by water as to make these part of a monopoly, too?

Mr. COOMBS. I simply asked that question.

Mr. CLEMENTS. I am glad you did. I think there is no question about the authority of the Government, and I think, after all, the greatest protection that this country, the world, has against unreasonable rates for transportation is the waterways. Surely, I think it would be wise to hesitate about giving over the waterways of competition also to combine with the railroads, if combinations are to be authorized.

It was said yesterday by my friend, the chairman of the Commission—he has his convictions strongly as I have mine, and we do not agree about this. I do not believe the sovereign remedy for rate cutting discriminations is pooling, and that it is the only remedy; nor do I believe if it is adopted it would not result in evils as great as the one we attempt to cure thereby.

The tonnage is so great that if you were to increase the present rates of the railways the amount of 1 mill per ton per mile, which is equal to an increase of 1 cent for carrying a ton 10 miles, which, while it would seem at first glance a small matter, it would result in a net increase of \$150,000,000, in round figures. With sufficient concert among carriers, as we have seen, it is not impossible nor very difficult to increase rates. Will they not do it? Will there be no temptation to do it? Are the people absolutely safe against any such result as that? And when you go to correct it we have pointed out the difficulties encountered. Suppose they have made a slight increase on a great many things so that

the gross increase amounts to \$150,000,000 in the way I speak of, and if wrong in whole or in part where is the remedy? If upon complaints correction were attempted, you would no doubt hear what Judge Prouty told you of the other day in one case we have been hearing—that the increase was so little on a ton of freight of the kind there in question—50 cents or \$1—that the question was asked, Who cares about it?

Why should the Commission waste its time in dealing with a question like that? The consumer, we are told, does not care whether he pays 50 cents more for a ton or not. The work of the Commission ought to be on broader lines, it is said, than to consider small, trivial matters like that. And yet on that product the increase will amount to several million dollars upon the whole. How easy it is to move up the rate a little on this, a little on that, and yet make the increase so slight that it would seem hardly worth while to deal with it in a particular case.

We are told, when we come to deal with it, that it is a trifle. When the matter gets in court it is asked how you can tell whether a given amount—say 90 cents or 93 cents—is a reasonable rate. What mathematical rule can you lay down? What demonstration in mathematics can you apply, like you can count the interest on a note or bond, and say up to this notch it is lawful, but above it is unlawful? You can not. You can not, with like certainty, demonstrate the reasonable rate. The railroads do not do it; they do not try. Nobody can do it. How easy it is then with power to make all rates, competition eliminated, to make slight increases here and here and all around, and then, when they are challenged, who can say which is reasonable—90 cents or 93 cents? It is a matter of estimate; it is a matter of approximation at best. Who is right, now, in such a case—the railroad or the shipper, each insisting on a different rate, or the Commission, which determines on a different one still?

These are some of my objections to that method of removing this evil, because I think if you remove the one you erect another.

There is, further, no assurance that all the railroads would pool if they were permitted to. There is no way to make them all pool, and who can say that it will be a remedy for cutting rates? The only benefit which the roads can offer to the public in this concession of the right to pool is simply that they will thereby get rid of what they have not been able to get rid of by any other means; that is, deviation from the published rate, discrimination by rebates. They say, "If you allow us to pool we will observe the published rates, because there will be no competing, or it will be so restrained as to induce observance of rates." These calculations might not work out. We do not know what influences would still work. This is not demonstrated as the sovereign remedy. There was a time before this interstate-commerce law was passed when there was no statute against pooling. They did pool, notwithstanding it was against the common law. It was not a crime. They could not enforce their pooling contracts. They did not stop discriminations then. There was no law requiring a published rate then, but there were discriminations then as well as now.

So it is not demonstrated at all that this is a sufficient and conclusive remedy.

Upon the other hand, if it fails to do what you want it to do and at

the same time increases the rates, then you have two evils instead of one, and you have not corrected any.

It was said yesterday by our friend the chairman, I think, in substance, that these two laws—the antipooling law and the Sherman antitrust law—had, strange to say, resulted in the bringing about of the exact things which they were intended to defeat. I think that would be a little hard to demonstrate—that these two things were responsible for the present conditions. I believe, Mr. Chairman, that you and I both voted for these laws, and if the chairman of the Commission is right, what fools we mortals must have been. Now, I do not think the present conditions relative to trusts and combinations of all sorts are solely due to these two acts. These things were going along and growing at a rapid rate. Here were two efforts to check them. They have failed.

The chairman also says (I have no doubt he thoroughly believes it, and I am not saying this in any criticism, for our relations are most cordial) in substance that these laws are not obeyed, are not lived up to, that they can not be, and therefore they must be absurd and unwise. What he says amounts to a declaration that they have not been enforced. If they have not, who can say what the effect would have been if otherwise. Returning now to one of the particular provisions of the bill before you, a suggestion was made the other day by Mr. Mann that if you enacted this law in respect to making it a crime to receive a rebate on the part of the shipper.

I think the law should make it a good deal harder for such shippers, so they would not be so apt to take rebates. If instead of a fine of \$5,000 the shipper who takes rebates was made in each case a fine never be less than the amount of the rebates he got, then it would be a more dangerous business for him to take them. If you put it so that he shall not profit by the violation of the law, then he is not apt to violate it; but what does it amount to to pay \$5,000 in a fine and get five times that in rebates? The fine in every case ought to exceed the unlawful profit of the transaction whether against carrier or shippers.

The CHAIRMAN. The offense would be committed, would it not, when one shipment had occurred?

Mr. CLEMENTS. I suppose that would be so, but a man might ship a whole train load of grain or beef and the rebates amount to a large sum. He could take a bill of lading for 50 cars as well as for 1 car.

Now, it was suggested by the gentleman from Illinois (Mr. Mann) that an individual who did not know the rate might get caught and be given trouble. I do not think it is necessary for us to apprehend that the law will be used to reach the innocent. We can of course, in respect to any proposed legislation, imagine cases that are possible where the innocent might be caught, but there is no real substantial danger in respect to these matters at all. During all the years that this law had been in force there has not been an instance of that sort. The guilty are not caught, that is the trouble, much less the innocent. And in order to stop the payment of rebates and the acceptance of rebates, and these unlawful discriminations, it must be made troublesome to those who do such things. It must be made expensive to them. So long as it profits the road more to pay the rebate and get the business which it bids for by paying the rebate there is a temptation to do it.

When you make them upon conviction, disgorge, and the shipper also, to the extent of the profit in the violation of the law, then there would not be any temptation to do it. I am sure there is no danger of an innocent shipper being caught. It is not the small shipper in the country or small town that gets the rebate. He complains more often of an overcharge which is above the published rate, and we are constantly having them corrected by correspondence, and reference to the published rates. Errors in rates, of course, occur, and the court can take care of these things so as not to involve a man who by mistake ships at less than the published rate, because it has been misquoted to him, or by mistake.

Mr. ADAMSON. If you catch an innocent man it would be easy to pardon him if the case was a plain one?

Mr. CLEMENTS. Yes; and he will not be prosecuted.

Mr. COOMBS. How can a district attorney make a distinction between two offenders, the shipper on the one hand and the railroad on the other?

Mr. CLEMENTS. In that case there is no offense.

Mr. COOMBS. Is he to prejudge that?

Mr. CLEMENTS. I should think so, to some extent. He does not draw a bill for everybody that comes in and represents a fact. It is his duty to find out; he is discharging a public duty when he makes a discrimination between a case that is a genuine, real crime, and one which is an oversight or mistake.

Mr. COOMBS. Where proofs are equal—

Mr. CLEMENTS. They would not be. Neither would I have the railroad indicted for a clerical error made by a clerk in collecting less than the rate. They do that sometimes. The court can take care of such questions as that. They will not punish the innocent.

We can find difficulties of that sort about any law by imagining extreme possibilities. Take an illustration. Under the operation of these laws, a few years ago railroads filed with the Commission what was known as the Joint Traffic Association agreement. The Commission thought it violated the antipooling clause of this law, and in the performance of its duty sent it to the Attorney-General, as required by the twelfth section of the act to regulate commerce, which says that the Commission shall enforce the act, and upon request of the Commission it shall be the duty of the district attorneys of the United States to institute and prosecute the necessary proceedings to that end, under the direction of the Attorney-General of the United States.

In that case we sent it to the Attorney-General asking that the guilty parties be enjoined and punished. I think Mr. Harmon was Attorney-General at that time. He instituted a proceeding in the court in New York to enjoin the parties. The case went through all the courts up to the Supreme Court of the United States, and that court, upon the face of the contract alone, without any other testimony, said it was a violation of the antitrust law. It did not decide whether it was a violation of the antipooling law or not. It took it under the other law and said it was a violation of that. The case was, I believe, prosecuted before the Supreme Court by Mr. Harmon's successor. There were 31 railroad presidents whose names were signed to that agreement. Thirty-one presidents; the most intelligent railroad men in the country had signed that agreement.

Mr. STEWART. What year was that?

Mr. CLEMENTS. That has been about, I should say, four or five years.

Mr. STEWART. Who was chairman of the traffic commission at that time?

Mr. CLEMENTS. Mr. Blanchard, who is dead now, was the executive officer of the association.

Mr. STEWART. Who succeeded him?

Mr. CLEMENTS. After the injunction they dissolved. Since that time they have had what is known as the official classification committee. Mr. Gill is at the head of that. They do not do, I suppose, now all the things that contract authorized them to do, and yet they do remodel rates and classifications affecting rates, as I have already said.

Now, to go on, as I was proceeding to say, there was not one of those 31 gentlemen indicted for signing that agreement, notwithstanding it was a violation of the antitrust law. There was the trans-Missouri agreement. That was another one that preceded this. I do not recall how many parties there were to that. It was decided in the same way by the same court. Nobody was indicted, nobody has been prosecuted in respect to either one of them. It was doubtless that these gentlemen had been advised by counsel that these were lawful agreements, and were presumed not to have intended to commit an offense.

Mr. STEWART. Was there an appeal taken from that commission, from that decision?

Mr. CLEMENTS. That was a railroad traffic agreement, you know; there could not be an appeal. I do not quite understand what you mean.

Mr. STEWART. Could not an appeal be taken from the decision of the traffic commission?

Mr. CLEMENTS. Oh, yes.

Mr. STEWART. Could not an appeal be taken to the courts?

Mr. CLEMENTS. Not an appeal to the courts.

Mr. STEWART. Were there not—

Mr. CLEMENTS. They had an appeal to a board of arbitrators, or some board of their own, but it was a voluntary outside affair. There could not be any appeal to the courts, you know.

Now, I mention this to show that wherever there is any doubt of the intent—of the criminality of a thing—the courts are not hasty to punish. In this case these are very intelligent men. They signed a written contract respecting a very important affair, and, for the reason named, doubtless, they were not prosecuted. That being so, surely the individual shipper who goes to a freight agent and asks the rate from one point to another, and accepts the rate the carrier gives him through his agent, is not going to be run down by the court and by a grand jury and petit jury if the agent who gives him that rate has made a mistake.

Mr. STEWART. Was not Vice-President Hobart chairman of that association at the time he was elected Vice-President?

Mr. CLEMENTS. He held some office in connection with it. It was shown afterwards, I think, that he was chairman of the board of arbitration. He was appointed by this association to arbitrate the percentages. They got pooling—that is, they got to dividing the business. Their contract did not provide for that.

There is another thing I think should be done. I refer to giving the informers a part of the fine in these cases.

There is no reason why that should not be done with reference to the railroads, and to the shippers, too. We hear it said that we ought not to encourage informers; we do not want to encourage a man to give information against his employer, etc.; but we have to do a good many things on the score of expediency to give practical effects to law. There is nothing wrong inherently in such provision. It has been resorted to and is resorted to constantly in many instances. There is now on the statute book, section 4273, provision in reference to the passenger transportation laws as to ships coming to this country, in which case the informer gets one-half the fine imposed for violating those laws, and in respect to carrying explosives on ships there is a fine and the informer gets half of it. That is resorted to to give protection to the public.

It seems to be necessary in some cases to do these things, and in respect to the navigation of streams there are certain regulations and laws and the informer gets one-half of the fines that are collected from persons violating these laws. There was a moiety law in respect to internal revenues, and the informers got one-half of that. That has been repealed. Rewards are offered to give effect to criminal laws in many cases.

MR. STEWART. Is there any law in reference to overcrowding on ocean steamers?

MR. CLEMENTS. I do not know whether there is or not. I should think there was, but I do not know.

Nobody defends rebates; nobody defends these deviations from the published rates; everybody wants to get rid of them except the man who receives them and puts them in his pocket. They are a small part of the people in number. It is not the little man in the country or the small town that is able to press the road so as to get rebates. It is the large shipper in a great commercial center, where there are several roads, and where there is scramble for the business. There is where these laws are disregarded. It is said that they are not *malum in se*, and that a violation of such a law does not affect a man's standing in the community, or in his church, or anywhere; that if a man can get a rebate it is all right for him to get it. And so they go. The railroads want to get rid of the rebates; they want to get the published rates in order to increase their revenue. I therefore suggest that if the informer shall have one-half of the fine, it will be one way to do away with the rebate.

It will be said that this will put the employer's clerks and his bookkeepers and the men who handle his money as spies on him, and that it would tempt them to reveal the facts. So it would; there is no doubt about that. Why do you offer a reward for the capture of a person who commits a crime? The governor of every State offers rewards for the purpose of interesting somebody who knows where the guilty party is, or of the testimony that will convict him. It may be an employee or somebody else. It promotes the ends of justice to do that, and the harm that would come of this would be insignificant compared to that coming to young men who are now employed by these great establishments receiving rebates, who are tempted to commit perjury when they are called before the Commission or before court. To

them it is the alternative of telling the truth and losing their employment or committing perjury.

I have seen them put to the test, and it is an awful alternative. There is infinitely more wrong that grows out of that condition of things to society and the country in that way than would ever come by reason of their revealing the truth in order to get half of the fine.

Mr. STEWART. Are those people church members?

Mr. CLEMENTS. Yes; some of them are. It seems to be so common that it does not interfere with their standing.

Now, Mr. Chairman, I have not much more to suggest about this. I think there ought to be authority to review upon challenge, upon complaint, the rate that is complained of, and that the Commission or somebody should be authorized—besides one of the parties to the controversy—to determine not only what is wrong, but what is right, and to give it effect; and not simply condemn what is wrong and leave the parties to scuffle it out, with all the delays incident. If all of a rate above 95 cents up to \$1 is unreasonable, then any part of it is unreasonable.

Mr. ADAMSON. You do not think there is any use for this circuitous appeal in this bill?

Mr. CLEMENTS. I do not see, myself; I do not think it is a radical thing at all—

Mr. ADAMSON. There is no limit to the number of times that you may set a rate and have it reviewed and set it aside. I think it would be better to put the order into effect unless the carrier can show the court that it is illegal.

I am not criticising the carriers' manner of managing their business. The laws are as they are, and railway people are actuated by the same motives that actuate other men. I am not arraigning them; I am talking of the condition of the law.

I think I have not any other important point I have omitted to talk about. There are a few practical things in regard to these amendments. I think the tenth section should be amended so as to keep in the shipper and the railroad, and to fix a minimum fine, and to fix it in no case less than the amount that has been obtained on the part of the shipper in respect to rebates that are paid, and to give the informer half the fine or recovery.

And then I think there should be an important amendment to the twentieth section. As it is now carriers are required to make annual reports to the Commission. But there is no time specified in which they are required to do it, nor do they incur penalties if they fail or refuse, and the reports are not required to be made under oath. The Commission takes them under oath and has a regulation of that sort, but it is questionable whether a party would be guilty of perjury when there is not a command in the law for an oath. It is an oversight in the law. I know of no carrier opposed to it, and I do not think anybody would object.

They ought to be required to swear to their reports, and they ought to be required to make them by the 15th of September each year. That gives them two months and a half after the close of the fiscal year to put it in form and send it to the Commission. As it is now the law does not specify the time. The Commission by order does specify the time; but if they disobey it or disregard or neglect it there is no penalty, and the result is that some important reports we do not get until after

January, until six months or more have elapsed, and it delays the publication and formulation of these reports in a way that is very undesirable. An accumulating penalty of \$25 a day for every day would correct the whole thing. There would be no hardship to the railroads about it. The reports would be promptly made and no penalties incurred.

I am very much obliged to you, Mr. Chairman and gentlemen, for your attention.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
April 26, 1902.

**STATEMENT OF MR. JOSEPH NIMMO, JR., STATISTICIAN AND
ECONOMIST.**

Mr. NIMMO. Mr. Chairman, I do not propose to range over the entire subject which you are now considering. I have recently written a pamphlet to which I have devoted three months of my time and effort. It expresses very fully my thought in regard to the particular phases of the subject to which I shall now invite your attention.

There is one matter of great importance, Mr. Chairman, which I desire to bring to your attention. I refer to action taken about a month ago before the United States circuit court at Chicago which has an important bearing upon the particular bill—the Corliss bill—which you are now considering.

It turns out that the act to regulate commerce has two arms, the right arm of the civil remedy and the left arm of the criminal remedy. The criminal remedy is provided in section 10, and the Interstate Commerce Commission has for the last fifteen years been working this left arm alone. The whole situation has been described to you by others, and I will not repeat it. It is very interesting. Recently the Commission seems to have discovered the efficacy of the right arm of judicial remedy provided in section 16 of the act to regulate commerce, and they have had recourse to that section in a case which came up before Judge Grosscup in Chicago in March last.

Judge Grosscup in that case said:

The question presented by this application is a new one and a very great one, and I will not pass upon it finally until there have been elaborate arguments on each side. If the United States courts, sitting in equity, have the power called for it will make them master of the whole rate situation, for an inquiry instituted by them to inquire whether the injunction has been violated or not will, much more readily than criminal proceedings, probe to the bottom of the railroad's doings. For my own part, I believe that railroad rates ought to be as stable as postage rates, so that every shipper would know, as certainly as the sender of a letter, how much it would cost him and the fact that no one else could send it for less. An injunction something like this has been granted in other cases, notably in the Debs case, but an important distinction between that case and this is that in the Debs case the things complained of were in their nature temporary, while in this case the injunction will be against conduct running continuously into the future. The interstate-commerce act has hitherto been ineffectively executed, but the taking of such power by the courts, as this injunction implies, might turn out to be the vitalizing of the act.

That is hopeful. I concur in all that the learned judge said in regard to the evils complained of. I have no comment to make on that. The injunction is a feature of the case which we may look forward to hopefully. The injunction will be against conduct running continuously into the future. That is a very cheering aspect of the case. As has been said, it will be a remedy for the future.

And Judge Grosscup says in conclusion:

The interstate-commerce act has hitherto been ineffectively executed, but the taking of such power by the courts as this injunction implies might turn out to be the vitalizing of the act.

There is thus a hope held out that after having expended its energies upon the criminal remedy for fifteen years, within a month the Interstate Commerce Commission has had recourse to the civil remedy. It might turn out to be the vitalizing of the act.

So the suggestion I have to make to you practically is this: If there is such a hope held out why not postpone legislation of this kind until you have seen whether this vitalizing is going to take place? If we have waited fifteen years to get at section 16, why not wait a little while in order to see how the judicial procedure under it will turn out?

There is another important aspect of this question, and that is that section 3 of the Corliss bill in effect takes the vitality out of this vitalizing section. I will not argue that. I think if you will read the first two pages of section 16 as it is printed in the ordinary print of the interstate-commerce act and compare that with the substitute which is proposed in section 3, repealing the former, you will see that it takes the vitality out of what Judge Grosscup called the vitalizing of the act.

Another point. The courts have no power whatever under this act to overrule a ruling of this Commission. In theory it may seem well to give this Commission this unlimited power, but to throw upon five gentlemen not only the power to say whether a specific rate is right, but to order a whole schedule of rates on a road, on a system of roads, and even on a great series of systems, is giving them a tremendous power. It is a great political power. With that power given to the Commission you would be besieged by claims in a way which you can hardly imagine. You gentlemen here know how you are troubled with claims and applications from your constituents throughout the country, asking for offices and clerkships and all sorts of favors. All that would be as nothing in comparison with what would ensue under this bill. It would be simply intolerable from the political point of view, however plausible in theory it may be.

The CHAIRMAN. Why do you say that there would be no judicial review? Does not the amendment provide specifically for that?

Mr. NIMMO. Mr. Chairman, excuse me for not fully discussing that aspect of the case just now. I state that to you as a fact. I have gone into this in the book I have recently written. That is the opinion of the best lawyer I have consulted. I have gotten the best legal view I could. In the Supreme Court decision in the maximum rate case the court held that it is one thing to inquire whether rates that have been made are reasonable—that is a judicial act; but it is an entirely different thing to prescribe rates for the future—that is a legislative act. In the Joint Traffic Association decision the Supreme Court decided that public policy is what the law directs. I think it is a principle well established that the courts will not overrule a law of Congress on the ground of its not being reasonable, or even on the ground that it violates an abstract principle of justice.

The CHAIRMAN. But has not the Supreme Court on several occasions held that where this legislative power was directly exercised by the legislature of a State in fixing rates that those rates were confiscatory and have set them aside?

Mr. NIMMO. Yes, sir. I will read right here from the pamphlet

already referred to my view on that particular point. That is the very focus of the whole contention:

While it is unquestionably constitutional law that no carrier can be compelled to carry freights at rates which are in effect confiscatory, yet a broad line of distinction lies between remunerative rates and confiscatory rates which in practice excludes the courts from the power to condemn any rate on the ground it is unjust or unreasonable. Without doubt the discretionary power proposed embraces the entire range of commercial profits which in practice justifies the construction and the operation of railroads. In a word, it is an autocratic and absolute power.

Now, there is a subject stated by Judge Knapp in regard to which I take issue with him on a question of fact. I think that in his zeal he has misstated a great fact. Judge Knapp declared that rates are exorbitant, and that they have not been reduced within the last ten years.

Judge KNAPP. I made no such statement as that.

Mr. NIMMO. The statement made was exactly this, that there has been no substantial reduction in rates during the last ten years.

Mr. KNAPP. I made no such statement.

Mr. STEWART. Judge Clements made that remark.

Mr. NIMMO. I want to be entirely right.

Mr. CLEMENTS. I made that remark in respect to the rate involved in the case I was then talking about.

The CHAIRMAN. It is not necessary that we discuss that matter.

Mr. NIMMO. I have the record here—

The CHAIRMAN. Our record will show what was said.

Mr. NIMMO. Judge Knapp said that there has been an apparent reduction in rates during the last year; that that apparent reduction, however, is deceptive; that it has been the result of the fact that there has been an enormous and disproportionate increase in the carriage of coal and other low freights. Am I right?

Mr. KNAPP. I said that.

Mr. NIMMO. That I deny. There is the issue of fact. I deny that statement by Mr. Knapp. Now I will come right to the point. Here I have compiled a statement. The Interstate Commerce Commission divides the railroads of the country into ten groups and works out a charge per ton per mile according to the statistics of the internal commerce of the country. I take the report of 1890 furnished me by the Interstate Commerce Commission, and also the one for 1900. Now, here are the rates, the charges for 1890 and the charges for 1900. This shows the reduction—16, 26, 21, 29, 24, 16, 22, 16, 28, 35, and for the whole United States 22½ per cent.

Revenue per ton per mile charged by railroads of the United States, according to statistics of the Interstate Commerce Commission.

| | 1890. | 1900. | Reduction. |
|--------------------|---------------|---------------|------------------|
| | <i>Cents.</i> | <i>Cents.</i> | <i>Per cent.</i> |
| Group I..... | 1.373 | 1.152 | 16 |
| Group II..... | .828 | .613 | 26 |
| Group III..... | .695 | .546 | 21 |
| Group IV..... | .844 | .595 | 29 |
| Group V..... | 1.061 | .808 | 24 |
| Group VI..... | .961 | .806 | 16 |
| Group VII..... | 1.360 | 1.064 | 22 |
| Group VIII..... | 1.152 | .964 | 16 |
| Group IX..... | 1.303 | .938 | 28 |
| Group X..... | 1.651 | 1.067 | 35 |
| United States..... | .941 | .729 | 22½ |

Here we see by the Commission's own figures that comparing data for 1900 with the data for 1890 there was a fall in the average rate in each one of the ten groups ranging from 16 to 35 per cent, and that the average reduction for the whole country was 22½ per cent.

So I am compelled to say that the recent declaration of Mr. Prouty at Chicago as to advancing rates is absolutely erroneous or that the data upon the subject published by the Bureau of Statistics and the Interstate Commerce Commission are absolutely erroneous.

The attempt is made to refute these figures upon the ground that there has been an inordinate increase in the tonnage transported of low-grade rates, such as coal and ores. But I have shown in this statement, which I desire to submit as a part of my remarks, that there is not a particle of truth in this assumption, the general increase of tonnage having been proportionately greater than the increase in the tonnage transported of iron ore and coal.

The data just given is not affected by changes of classification, as it embraces freights of all descriptions without regard to class.

Now I come to the statement of Judge Knapp that these reductions in rates have been due to the inordinate increase in the carriage of coal, ores, and other low freight, and I assert to you that the reverse is true, namely, that the increase in the freights other than coal, iron, and so on has been more rapid than the increase in the total of iron, coal, and other low freights. I make this diametrically opposite statement, and I base it upon the statistics of the United States Government, published in the statistical abstract of the mining resources of the United States. The total tons carried 1 mile on railroads in the United States increased in ten years 86 per cent, while the coal marketed and the iron ore produced, according to the statistics of the Geological Survey, increased only 74 per cent. That is, coal and iron. The production in those articles did not increase as fast as the increase in the general merchandise of the country.

As a special example, I have taken group No. 2, which embraces the States of New York, Pennsylvania, and Maryland, and compared them with Pennsylvania, West Virginia, and Maryland, three great coal-producing States, as to the amount of coal produced, and I find that the traffic on those roads of general merchandise increased faster than their traffic in the carriage of coal.

Now, in order to be specific, Judge Knapp made the statement to me verbally, and he has set me to work on these figures. I have written to six or eight railroads in different parts of the country, and I have brought to their attention this specific statement of Judge Knapp, and asked them if the rates I have read increased or decreased during the ten years.

There is one aspect of this case which seems to be lost sight of by Mr. Knapp. He says seven or eight hundred charges have been filed lately of increases in railroad rates. Here is a fact in railroad economics.

A classification or a schedule gets stale in about a year. This is a great and growing country; conditions are continuously changing, and so the classifications have to be changed. A railroad schedule may be all right to-day but it will be stale in about a year or two. This has been going on ever since we have had railroads. They have to meet together occasionally and adjust their classification. I have asked cer-

tain gentlemen to send to you and let you know whether the average cost of charges on those things has gone up or gone down.

Gentlemen, this whole talk about exorbitant rates in this country is sheer moonshine; without any feeling of disrespect I say it is nonsensical. In March, 1898, Mr. Knapp, the president chairman, who is present with us to-day, said:

The question of excessive rates, that is to say, railroad charges which, in and of themselves, are extortionate, is pretty much an obsolete question.

The Supreme Court has in no case decided that a rate charged is in itself exorbitant, and I think I am not mistaken in saying that the question as to the reasonableness of any rate per se has never been proved in any Federal court.

In all these millions of transactions \$20,000,000,000 worth of property moves every year, probably \$25,000,000,000, and yet there has never been any rate which has been proven in a Federal court to be extortionate. The amount just stated is about twice the value of all the railroads of the country.

I next come to the question of discriminating rates. The question of discriminating rates was thrashed out in the Senate committee about two years ago. A resolution of inquiry, submitted by Mr. Elkins, who is now chairman of the Senate Committee on Interstate Commerce, was addressed to the Interstate Commerce Commission asking them certain questions about discriminating rates.

The Commission answered promptly, and this is about the result in all the United States during the ten years from April, 1890, to April, 1900. The total number of cases decided by the Commission was 180. The number of appealed to the court was 35.

The Commission was sustained in 4 cases; the Commission was reversed in 17 cases.

I now refer to something here which is highly commendatory, very highly complimentary, to the Interstate Commerce Commission. I like to compliment the Commission, because they are estimable men. In its last annual report the Commission says:

The great mass of complaints are handled and disposed of by the Commission by preliminary investigation and correspondence. The total number of proceedings brought before the Commission during the year was 340, but only 19 formal proceedings were instituted before the Commission, or only 1 in 18 of the complaints preferred. There were only 10 cases decided by the Commission during the year, or 1 in 34 of the complaints entertained. This admirable results indicates the high degree of perfection to which the railroad system of the country has attained. It is also creditable to the act to regulate commerce and to its administration.

Now, the efficiency of this law has been questioned and denied, but with this section 16 put in force it is going to turn out to be a much better law than anybody thought it was going to be. Here is a Commission that hears these cases, 340 a year, as a conciliatory body and as an arbitration body, and they settle informally 321 cases out of the 340 cases submitted to them. Where is there a court in the United States that has such success as that?

This is a sort of a demonstration. This Commission has been looking with disdain upon the most admirable feature of this law. That is its conciliatory feature, its arbitration feature. It has a power to settle things out of court, and it has succeeded admirably in doing it. Why, sir, I regard it as one of the ornaments of our civilization, and am proud that we have a jurisdiction here that can settle 19 out of 20

cases submitted to its judgment. But notwithstanding this great administrative success they come here and say that this law is weak, and that they are powerless. They are exercising the finest kind of power that was ever exhibited by a civilized government, and they are doing it successfully.

Mr. CLEMENTS. The gentleman says they were settled. They were not settled. In most cases they were disposed of by leaving the shipper right where he was.

Mr. NIMMO. In the book that I have written I have gone into the subject of secret violations of published rates with great care and have made these declarations:

First. It has steadfastly denied—

I am referring to the Commission—

that it is in any especial manner responsible for the prevention of rate cutting.

I want Judge Knapp and these other Commissioners to bring the facts disproving these statements.

Second. It has opposed any amendment to the act to regulate commerce designed to afford the Commission greater facility for the enforcement of the penal provisions of the statute.

In other words it has treated not only with disdain but with aversion that very feature I have been talking about, that magnificent feature of conciliation.

Third. It has been derelict in the discharge of duties with respect to the prevention of rate cutting.

I have referred to the proceedings of the Judge to prove that.

Four. The remedy proposed by the Commission is not applicable to the cure of the evil complained of.

And that is the reason why we have resorted to section 16, abandoned the criminal, and invoked the civil remedy—the right arm of the law, and—

Five. The remedy proposed by the Commission is misdirected.

Those are the five statements I make in reference to the secret violations of published rates, in reference to the Interstate Commerce Commission taking action in connection therewith, and I desire here to introduce just what I have said upon that subject:

The Commission has strenuously maintained that it is not responsible for the prevention of rate cutting.

By the second section of the act to regulate commerce every departure from tariff rates is expressly forbidden and is declared to be illegal. By section 6 it is provided that in order to compel every common carrier to publish and file with the Commission its tariff rates, fares, and charges the "writ of mandamus shall issue in the name of the people of the United States at the relation of the Commissioners," and section 12 provides that "the Commission is hereby authorized and required to execute and enforce the provisions of this act;" for which purpose the Commission is given the widest possible powers of investigation, including the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, contracts, and agreements and documents relating to any matter under investigation. The law distinctly provides that it may by one or more of its members prosecute any inquiry necessary to the discharge of its duties in any part of the United States. It has also the power to require every district attorney in the United States to prosecute all necessary proceedings for the punishment of violations of the act, and its findings in all judicial proceedings are made *prima facie* evidence as to each and every fact found.

Furthermore, it is provided by section 16 of the act to regulate commerce that if it is made to appear to any United States court "that the lawful order or require-

ment of said Commission drawn in question has been violated or disobeyed it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission and enjoining obedience to the same."

Notwithstanding these clearly prescribed powers and duties the Commission has, from the beginning, sought to repel the idea that by the act to regulate commerce it is especially charged with the duty of enforcing the provisions of the act against secret rate cutting—the paramount purpose of the act. In proof of the correctness of this assertion the following facts of record are adduced:

In its annual report to Congress for the year 1893, at page 7, the Commission declared that it "is wholly without authority as respects those discriminations between individuals which are made misdemeanors by that enactment," that "it is endowed with none of the functions pertaining to the detection and punishment of delinquents except such functions as may be exercised by private citizens," and (on p. 8) it deprecated the idea that it has anything to do with "uncovering the guilty transaction and bringing to justice those who engage in it."

In a letter addressed to Hon. William E. Chandler, a Senator of the United States from New Hampshire, under date of October 17, 1895, Hon. Martin A. Knapp, then an Interstate Commerce Commissioner and now chairman of the Commission, strenuously maintained that the prevention of the crime of rate cutting is a thing "with which the Commission has no power to deal." (Senate Doc. No. 39, Fifty-fourth Congress, first session, p. 14.)

For this and other declarations of similar import Senator Chandler administered to Mr. Knapp and to the Commission a sharp rebuke.

Mr. Knapp appears to have been then, as he has been ever since, laboring under the delusion that the duty of preventing rate cutting and other penal offenses denounced by the act to regulate commerce is incompatible with and beneath the function of revising all the freight tariff of the country, of prescribing rates for the future, and of determining the relative advantages to be enjoyed by competing towns, cities, and sections, and by competing industries throughout this vast country, a conception which he described in his letter to Senator Chandler as "my high ideal of the work in which the Commission is engaged," an idea which as I have endeavored to show is expressive of a malignant form of bureaucratic government, and as such utterly inconsistent with the governmental institutions of this country.

In its persistent denial of the fact that it is explicitly charged by the act to regulate commerce with the duty of preventing rate cutting the Commission flatly opposes its opinion to that of the Supreme Court of the United States. In the *Maximum Rate Case* (167 U. S., 479) the court said:

"It (the Commission) is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one against another; that no undue preferences are given to one place or places or individual or classes of individuals, but that in all things that equality of right, which is the great purpose of the interstate-commerce act, shall be secured to all shippers."

But, as before stated, in this as in other respects the Commission has not and does not to-day hesitate to oppose its opinion to that of the Supreme Court of the United States regarding the interpretation of the statutory or constitutional law of the land.

The Commission has repelled any attempt to give it greater power in enforcing the penal provisions of the act to regulate commerce.

Not content with a denial of its duty to prevent rate cutting the Commission has deprecated the idea of increasing its power to prevent the commission of misdemeanors, particular reference being had to rate cutting. On page 7 of the seventh annual report of the Commission is found the following declaration:

"But the main point to be considered is that Congress has no power to clothe the Commission, or any similar tribunal, with authority to execute the penal provisions of this statute, other than to aid prosecuting officers in procuring evidence against suspected parties."

And again on page 8:

"No amendment of this statute, therefore, is necessary or suitable with the view of giving greater power to the Commission in enforcing its penal provisions."

But when driven from the charges of exorbitant rates and unjustly discriminating rates as possible excuses for demanding of Congress autocratic power the Commission glaringly stultifies itself by seeking to secure amendment to the act to regulate commerce for the purpose of preventing rate cutting through an expedient which as herein shown is not only out of all proportion to, but totally inapplicable to the offense, besides being essentially revolutionary.

The repudiation by the Commission of responsibility for the prevention of rate cutting and its simultaneous effort to prevent any strengthening of its powers for that purpose which would be subject to judicial review clearly indicates its fixed purpose and desire to free itself of any sort of cooperation with, or dependence upon, the judiciary in the discharge of its official function.

The Commission has been derelict in the discharge of its duty with respect to the prevention of rate cutting. The Commission has neglected the duty of using its best efforts to aid in detecting and in bringing to punishment persons who have been guilty of the offense of rate cutting and other misdemeanors, a duty plainly incumbent upon it under the provisions of sections 2, 6, 10, 12, and 16 of the act to regulate commerce. This seems to be the result of the extreme aversion entertained by the Commission toward that class of duties.

In the fifteenth annual report of the Commission, submitted January 17, 1902, at page 8, appears the following:

"To convict for unjust discrimination it is necessary to show not merely that the railway company paid a rebate to a particular shipper, but it must also be shown that it did not pay the same rebate to some other shipper with respect to the same kind of traffic moving at the same time under similar conditions. As a practical matter this is almost always impossible."

The rule of law here stated by the Commission was announced by Judge Grosscup, of the northern district of Illinois, in a decision rendered June 20, 1896, in the case of *United States v. Hawley* (71 Fed. Rep., 672), with which case the Commission had nothing to do. It is as follows:

"This case illustrates that whatever difficulties there are in the enforcement of this act are not so much due to the law itself as to the failure of the prosecution to gather up and lay before the grand jury the essential facts of a case. The facts difficult to obtain—the transaction between the carrier and the favored shipper—are fully spread upon this indictment. The facts not difficult to obtain—the identity of the shipper discriminated against—constitute the fatal omission. Ordinary alertness and intelligence would have avoided this pitfall."

Herein the court declared that the facts as to the identity of the shipper discriminated against are "not difficult to obtain" and sharply animadverted upon the failure to obtain them, whereas the Commission, in its annual report, dated January 17, 1902, has declared that the discovery of such facts "is almost always impossible."

In this the Commission flatly opposes its opinion to that of the judiciary and of every freight traffic manager in the country. I mention this contrariety of opinion upon a matter easily susceptible of proof as one worthy of Congressional inquiry.

The judicial opinion just cited relates particularly to the offense of unjust discrimination. But in the same case the court stated the fact that it is a violation of the law to charge less than the tariff rate. Even this offense, not involving any charge of unjust discrimination, the Commission seeks to ignore, declaring that the law "does not punish (it) otherwise than by a possible nominal fine." The law, however, explicitly prescribes for this particular offense a fine of "not to exceed \$5,000."

The declaration of the Commission that the act to regulate commerce does not confer upon it ample power to prevent rate cutting is strenuously denied by able lawyers and jurists who hold that sections 2, 6, 10, 12, and 16 of the act give it ample power to correct and prevent such offenses. If, however, the law is in this respect defective, by all means let it be amended so that the procedure may be freed from any political difficulty.

Differences of opinion prevail as to the nature of the remedy which should be adopted for the prevention of rate cutting. In its fifteenth annual report, submitted January 17, 1902, the Commission suggests as a remedy for rate cutting that the corporation as well as its officers should be subject to the penalty prescribed in the act. The general solicitor of one of the great trunk lines of the country suggests that the corporation alone ought to be subject to the penalty. The question is one to be determined by Congress and is worthy of careful consideration.

It is believed that any proper amendment to the act in regard to rate cutting would be cheerfully accepted by the principal railroad managers of the country, and that they would cordially cooperate in the enforcement of the law. The public attitude assumed by the leading railroad officials of the country toward this subject seems fully to sanction this statement.

In this connection it is worthy of observation that the Commission fails to show in how many cases it has given the courts a chance to consider rate cutting upon evidence which the court declares not difficult to obtain, or to adduce evidence upon which the courts may impose what the Commission calls "a possible nominal fine," but which may amount to \$5,000 and which with ordinary diligence can be imposed.

It is believed that if the Commission had been half as earnest in the attempt to pre-

vent rate cutting as it had been in its efforts to secure autocratic power, the misdeed complained of would now be very much less the subject of complaint. It is believed also that a thorough Congressional investigation of this particular subject would clearly expose a manifest dereliction of duty on the part of the Commission.

The history of the case exposes the aversion of the Commission to a duty clearly imposed upon it by the interstate-commerce act, and this is exhibited nowhere so glaringly as in the oft-repeated assertion of the Commission that it has been deprived of the power to afford relief to complainants against wrongs incident to infractions of the law, and that is not responsible for the prosecution of specific violations of the provisions of the act to regulate commerce, both of which statements are strenuously denied.

A recent news item indicates that at last the Commission has awakened to a realization of the fact that the law imposes upon it a duty with respect to the suppression of rate cutting, and that it is disposed to try to set in motion the means for accomplishing that object before the courts, as provided in the act to regulate commerce.

The remedy proposed by the Commission is not applicable to the cure of the evil complained of. The plan of conferring upon the Commission the power to prescribe rates is totally inapplicable to the offense of rate cutting. It has no relation to such offenses as of means to an end. The Commission has never sought to show that it has such relation. There is not the slightest reason to believe that rates made by the Commission would be any more exempt from rate cutting than are rates made by the companies. The true remedy pointed out by the judiciary and by the lessons of experience lies in a faithful enforcement of existing laws, which the Commission has spurned and neglected to enforce. Such laws, however, may be amended or supplemented by others which would facilitate the administrative work of the Commission, for the question is one of procedure and not one as to the power to act.

The history of the course pursued by the Commission in this matter clearly indicates that the idea of asking Congress for autocratic power over the commercial, industrial, and transportation interests of this country in order to suppress rate cutting is an afterthought. Rate cutting is now brought to the front apparently from the fact that the Commission sees no other means of advancing its claim to the exercise of autocratic power either in exorbitant rates or in unjustly discriminating published rates.

Secret violations of published rates have their origin in the competition of rival commercial forces and are expressions of such struggles. This is apparent to merchants and to railroad managers throughout the country, and as such is deprecated by them. The fact is also clearly perceived that the remedy for such evils lies primarily in railroad self-government dictated by enlightened views of self-interest, the inspiring motive of all wholesome statutory enactments. Unfortunately the Commission has frowned upon such self-restraint and sought to substitute therefor its claim to the exercise of arbitrary power.

The question is one of vast political import and should not be left to the discretion of any administrative body—certainly not to any bureau of the Government bent upon the acquisition of autocratic power over the commerce and industry of this country. It is eminently a question for Congressional determination.

Besides, it may be observed in this connection that the duty imposed upon the Commission by the twenty-first section of the act to regulate commerce, to recommend to Congress such additional legislation "as the Commission may deem necessary," does not extend to great questions of public policy or to political questions which would naturally command the attention of Congress, but, in the language of Mr. Justice Shiras in *Texas and Pacific Railway v. Interstate Commerce Commission* (162 U. S.), should "be confined to the obvious purposes and directions of the statute." It is to be regretted that the Commission has not been guided throughout by this obvious rule of propriety.

Beyond all question the remedy proposed by the Commission is misdirected. There are always two parties to offenses involving contractual relationships. In the case of rate cutting these are the shipper and the carrier. The shipper is invariably the prompter to the offense, for it is always to the interest of the carrier to secure tariff rates and to the interest of the shipper to secure less than tariff rates.

The concrete cases which supply the text and ostensible cause of the present movement of the Interstate Commerce Commission for the purpose of preventing rate cutting is furnished mainly by the persistent efforts of certain large shippers of packing-house products of the West to secure less than tariff rates for the carriage of their products. It is an old story, to which public attention has been several times directed during the last two years. So uniform, however, has been the "cut" by the several competing companies that it constitutes practically a common rate, lacking only the legal requirement of publicity. The rates actually charged would avoid

the censure of being "cut rates" if they were published. They involve no material discrimination with respect to producers, localities, or shippers, but do involve most outrageously discriminations with respect to carriers. All this is clearly stated by the Commission in its annual report just published. Therein it adduces the fact that at one time a particular road "was carrying into Kansas City 33½ per cent of the cattle slaughtered there and carrying out of that city only 2 per cent of the product."

The Commission also shows, in the report mentioned, that the cut rates are a source of benefit to the producer, the consumer, and the packer. At the same time they involve enormous loss to the carriers. This is stated by the Commission in reply to two self-addressed inquiries: First, "Who has the benefit of the reduction in these rates?" and, second, "Does it result in advantage to the producer and consumer, or is it absorbed by the packing house itself." The answer of the Commission to these questions is as follows:

"It seems probable that in case of a reduction like this, which seems to be tolerably uniform and long continued, the general public must obtain some advantage, but we think that in the main these sums swell the profits of the packers. The number of these great concerns is only some five or six, and there does not appear to be much discrimination between them. Each usually knows about what the lowest rate is and usually manages to obtain that rate."

This clearly expresses the whole matter at issue. The cut rate is practically a common rate, and irregular only because not published as required by law. This results in some benefit to the producer and the consumer, much more to the packer, and appalling loss to the carrier—the railroad company. This conclusion has been laconically expressed as follows by one of the Interstate Commerce Commissioners, since his recent return from Chicago: "The fact is that five or six big shippers have for years been sandbagging the railroads." Hence the question arises, Why attempt to punish those who are sandbagged, instead of having recourse to some plan to punish the sandbaggers? But it is just this injustice and manifest solecism into which the Commission has unconsciously stumbled in its most unreasoning desire to acquire a coveted power by visiting upon the railroad companies the severest and most humiliating punishment, namely, that of depriving them of the right to contract freely with the general public as to the commercial value of the service which they render and with no other apparent excuse than an utter inability to base their claim to autocratic power upon any other plausible pretext.

What has been said of rates on packing-house products applies substantially to complaints as to "cut rates" on wheat and flour. The latter involves a long and sharply debated question as to the relative rates on wheat and flour. This is a complex and involved commercial and economic question. The general but rather vague conclusion of the Commission in regard to it is expressed as follows on page 16 of its last annual report:

"To an extent the rate upon flour in the foreign market must be higher than that upon wheat. This is decreed by physical conditions which no statute and no commission can alter. To that extent this industry must expect to operate at a disadvantage."

In the light of all these facts the proposition to have recourse to the haphazard and absurdly misdirected remedy of governmental rate making for the cure of problematical evils attending the transportation of provisions, flour, and wheat and the commerce in these commodities would be as absurd as it would be monstrous.

A Congressional investigation as thorough and as impartial as that known as the "Cullom investigation of 1886" would not fail to set all these difficulties in their true light and to disclose a remedy which would be properly directed and efficacious.

I have sought neither to palliate nor to defend rate cutting. Its extent and effects have been greatly magnified for the purpose of predicating upon it the Commission's claim to the exercise of autocratic power, but it is an undoubted evil, and has no defenders other than those shippers who practice it to their own advantage and to the detriment of their competitors and of the carriers. Beyond all doubt it is an evil which can be abated and as successfully prevented as are other misdemeanors which are mala prohibita.

Mr. Chairman, there is one subject I would like to speak to you about, in which I am very much interested, and that is the importance of a thorough Congressional investigation of the railroad problem. During our long period of railroad construction we have had only one thorough investigation on this subject. These hearings, you know, are partial. Your time is broken in upon, but to come down to a thorough investigation, we have had but one, namely, the Cullom

investigation of 1886. Even the Windom investigation of 1873-74 was not a complete railroad investigation. I was employed as a specialist by the Windom Commission on this very question. Subsequently I studied the question carefully and wrote a series of reports on it as Chief of the Bureau of Statistics, the result of ten years of investigation.

In England, since 1840, they have had ten Parliamentary investigations. With only one twenty-fifth of the area, and with only 22,000 miles of railroad, as against 200,000 miles of railroad in the United States, Great Britain has had ten investigations on that subject. I have worked up something upon that subject with great care, and I will hand it in; and I want to say that when you consider all the complexity of conditions—these difficulties—I have been studying this subject for over forty years. I began to write on it in 1856, when I was employed as a civil engineer on one of the first railroads constructed in Iowa. There is nothing I crave so much as the knowledge which would come from a thorough and impartial Congressional investigation, such as was had in England, which was started in 1842. Mr. Gladstone was chairman of that investigation, and it was an example for all the commissions which have followed in England.

There is another subject which I would like to bring to your attention. It will not take me over five minutes. I refer to the history of pooling. In no other way can you get at the merits of pooling. That is the way with all great economic questions. Their solution is always based on the lessons of experience.

Perhaps there are few living men who are more familiar with the early history of pooling than I am, because so many others, with whom it was a matter of personal experience are now dead. Many railroad men, especially well-informed men, have passed away within the last ten or twelve years. Go back with me to 1856, when every railroad was practically independent of every other railroad. The idea of building competing railroads was not entertained. Such a thing was thought to be bad policy. That idea prevailed in your State, Mr. Chairman, at the time when I was out there in 1855, 1856, and 1857. There were five lines projected. In a letter which I wrote to a New York newspaper at that time—

Mr. STEWART. Can you tell us what you represent, what organization, if any?

Mr. NIMMO. I am coming to that in a moment. This is about the substance of the article describing the railroad problem of that period, in 1856. It was like this: "There are five railroads projected across Iowa. Take those five roads; they will each be about 20 miles apart, 20 or 30 miles, so that each railroad will have 10 or 15 miles of land on each side to feed it. Each one will have a separate terminus on the Mississippi River, which is to be for all time the great highway of commerce for the United States. They will each have a different terminus both on the Missouri River and on the Mississippi River. The commerce will come out from the West to go down the Mississippi River. That was about the idea of having it then and competition was not known. At that time the best informed railroad men in the country, engineers and constructionists, declared a transcontinental railroad to be an impossibility, that it could not be constructed in one hundred years.

All that is of the dead law. Now, we have one vast network of

railroads extending from the Atlantic to the Pacific Ocean. The physical union between them became as intimate as that between the Siamese twins. The intimacy begot strife. It is said that Chang once beat Eng into a state of insensibility, and the result was that they both had to go to bed for three weeks. The railroads encountered similar troubles; they were forced to adopt measures in the nature of self-government. Now, the railroads of the country constitute physically one great organization. That organization must have the means of self-government. That government has got to be instituted in some way by associations of various sorts. They adopted all sorts of plans to complete this organization of the American railroad system, the greatest system of transportation the world ever saw. It is still involved in difficulty, but it is the grandest system of transportation the world ever saw.

Mr. STEWART. Is there harmony in this one organization?

Mr. NIMMO. The degree of harmony is wonderful; but still there are loose ends, there are frictional resistances, and there will be to the end of time. Here the question which confronted all the railroads of the United States was, "How can we organize this great mass of railroads so intimately connected physically?" It is physically one. It is united in ten thousand different ways. Cars and locomotives all employed jointly on different lines. There is a commercial demand that goods starting, say in Chicago, shall go in that same car over the different roads to the furthestmost part of the country. The act of June 15, 1866, was the result of public demand. I have called that act the charter of the American railroad system. It permitted the railroads to connect their lines and to engage in joint traffic. That brought about the most terrific problem, one of the most complex and the most difficult problems that the human intellect ever grasped. It has not yet been worked out perfectly, and never will be; there always will be frictional resistances and incidental resistances.

And now as to the history of pooling: There had been some small efforts at pooling as between Chicago and Omaha. Three or four of the Iowa roads got together and they made a pooling contract, a division of traffic. There were two or three other arrangements of the sort. But the question arose how to take a whole series of railroads in different States and sections and get those roads into an agreement which would stop cutting each others' throats, a practice which brought about horrible discriminations. That which occurs to-day is nothing compared to it. Demoralizing discriminations occurred all over the United States. There was one man, Albert Fink, vice-president of the Louisville and Nashville road, who worked out a plan by which he could take the railroads south of the Ohio River and bring harmony out of that great mass where they were fighting commerce to death. He figured that out.

The history of that is this: In 1875 I entered upon an office which was created for me. It was called the division of internal commerce, for the purpose of carrying on the study of what the Senate Committee on Transportation Routes had been engaged on for two years. I entered upon that work the 1st of July, 1875. In September Mr. Fink was appointed and started his big pooling scheme at Atlanta, Ga. I wrote to him that I would like to understand his scheme, and he came to Washington to see me and talked it over. He spent a week here. We talked over the pooling scheme, and the aim and object was

to stop this cutthroat fight involving these outrageous discriminations, which were bringing about chaos in the traffic of the commerce of the country. Mr. Fink had hard work to get his scheme into the heads of railroad officers. He did not succeed perfectly. He died almost in despair because he believed he had a remedy for the whole difficulty. He could not get the railroad presidents of the United States to agree with him on certain points.

The first principle in all railroad transportation is to get traffic. The second principle is to get as much as you can for it. The first step is an agreement as to the proportion of traffic which each line is to have. That has got to be the basis upon which we can build up the government of this great organization. He got them interested in it. I said to him:

Your scheme has two grounds of support. First, you have demonstrated the fact that an enlightened sense of self-government ought to prompt these men to adopt this scheme. The second, they have implicit confidence in you, in your intelligence, and in your integrity. But they need a third prop, for it takes three props to make a stable tripod. No inanimate thing can stand unless it has three points of support. You have to legalize this thing. You must make it legal.

He said, "That will come by and by."

The fact is, this whole pooling scheme ran on two points of support. It occupied a position of unstable equilibrium.

I think to-day pooling is very unpopular with some of the leading railroad men of the country. Some men say that they would rather have a simple agreement as to rates. Then let the rates divide the traffic. But I think pooling among the leading railroad men is unpopular. Don't you think so, Judge Knapp?

Judge Knapp does not answer that. I think the Judge must know that.

Mr. KNAPP. I am not afraid to answer any question. I stated yesterday that if the right was exercised it would rarely find expression in pooling; it would find expression in the organization of traffic associations.

The CHAIRMAN. Mr. Nimmo, I would like to ask you for whom you speak, if for anyone?

Mr. NIMMO. Only for myself.

The CHAIRMAN. You are not authorized to speak for anyone else?

Mr. NIMMO. No, sir. I have been asked two or three times to represent certain parties, but the fact is that the railroad men of this country are just about as much at loggerheads and as diametrically opposed to each other in their views as other men. My business is that of statistician and economist. I furnish information, and I am very desirous of furnishing information, not only to people that believe as I do, but to people that do not believe as I do; and sometimes the people who do not are in the majority, and, like everybody else, I like to have as much patronage as possible. I have had a wide correspondence on this thing, and I want to be perfectly independent in my views.

Mr. STEWART. You are in the pay of some of the railroads?

Mr. NIMMO. I furnish information.

Mr. STEWART. You furnish information now in reference to these hearings?

Mr. NIMMO. No, sir; nobody has ever suggested—

Mr. STEWART. I mean you have furnished information in regard to these hearings?

Mr. NIMMO. I furnish information to anybody.

Mr. STEWART. Who are those corporations?

Mr. NIMMO. I merely furnish information. The companies will appear here by the attorneys of the railroads.

Mr. STEWART. Have you any delicacy in furnishing their names? Yours is an honest employment?

Mr. NIMMO. Yes.

Mr. STEWART. Why should you conceal your employers' names?

Mr. NIMMO. The same as anybody. I would rather not. If they want to come up and use my statistics they can quote them, but my work is confidential; I have pursued that course.

Mr. STEWART. That is the vice we want to get rid of—these secret arrangements and rebates. Why should you be so clandestine about your employment? That is what we are complaining about.

Mr. NIMMO. I am giving you merely a philosophical view of the case as I understand it after forty-two years' study.

Mr. STEWART. You do not want to pose here as a philanthropist? You do not say you are publishing these statistics without remuneration?

Mr. NIMMO. Oh, no; oh, no. I say I am adopting the profession of statistician and economist. I furnish information, and it is all confidential.

Mr. STEWART. Were you invited to come before this committee?

Mr. NIMMO. I asked my friend, the chairman, to let me come up here. It is the joy of life to me to be engaged in this work, Mr. Representative. Besides any question of remuneration, I am in this work because I am personally interested in it. I have been preparing a book on it for forty-six years, and I expect to continue in the work while I live.

Mr. STEWART. But you are not doing it merely for your health?

Mr. NIMMO. No; I have a book that I am writing, and it has got to be a life work with me. My book will be entitled the Evolution of the American Railroad System. I have written a great deal on the subject, and I want to boil it down, but I want the subject to evolve a little further. There are some problems that you have before you which I want to see settled before I finish this work.

Mr. STEWART. What is the rate per volume?

Mr. NIMMO. I do not know how big the volume is going to be.

The CHAIRMAN. We have been in session now over three hours, and the committee will be in recess until next Tuesday, April 29, at 10.30 a. m.

(Adjourned.)

The following is the statement referred to in the course of this hearing in regard to the importance of a thorough Congressional investigation of the railroad transportation question in this country.

INVESTIGATION BEFORE LEGISLATION.

The many vitally important questions which confront the country touching any attempt at a radical change in our laws relative to the regulation of the railroads seem to point unerringly to the necessity for a thorough Congressional investigation of the subject in advance of any attempt to legislate upon it. In this we may profit very much from the example set by the people of Great Britain.

As early as the year 1840 questions arising out of the independent corporate ownership and control of the railroads agitated the public mind in Great Britain. The old British ideas of liberty involved in the consideration of monopoly, competition,

and combination, which from time immemorial had been the subject of heated public discussion and of reflective judicial debate, gave rise to just such apprehensions and political theorizing as those which now seriously affect public sentiment in the United States.

A British statesman of influence declared at an early date that "the State must govern the railroads or the railroads would govern the State." George Stephenson—eminent as a civil engineer—declared that "where combination is possible competition is impossible." These expressions were for years accepted in Great Britain as politico-economic dogmas.

In the year 1844 a strong Parliamentary committee was appointed for the purpose of inquiring into and providing against the assumed danger. The Hon. William E. Gladstone was chairman of that committee. Its labors resulted in an act of Parliament (act 7 and 8 Victoria, 85) passed in the year 1844, wherein it was provided that the Government might, upon terms stated in the act, at the expiration of fifteen years after completion, purchase any railroad constructed after the passage of the act. In a word, the British Parliament provided, constitutionally, for governmental ownership and control of the railroads. But that power has never been exercised, and the public sentiment of Great Britain to-day utterly repudiates any such policy.

This has come about as the result of the lessons of experience and of patient and persistent Parliamentary inquiry, reference being had particularly to the Parliamentary investigations of 1840, 1844, 1846, 1852, 1865, 1867, 1872, 1881, and 1893-94. The results of these ten Parliamentary inquiries were that the asserted dogmas hereinbefore quoted have been exploded, while other baseless notions, such as those which now to a greater or less degree possess the public mind in this country, have been dispelled; and the ancient principles of liberty and methods of justice still prevail in the regulation of the railroads of Great Britain. In this regard railroad regulation in that country strikingly illustrates the favorite British maxim, "We have government by discussion."

But how different has been the practice in this country. With an area, exclusive of Alaska and our insular possessions, 25 times that of Great Britain and Ireland, and a railroad mileage of 192,161 miles, as against 22,000 miles in Great Britain, we have had only one thorough Congressional investigation, namely, that conducted in the year 1886 by the Senate Committee on Interstate Commerce. The act to regulate commerce drawn by Senator Cullom, chairman of that committee, is loyal to the fundamental American principle of government, that all contested questions affecting the commercial interests of the country shall be subjected to the test of judicial inquiry and determination. But the Populistic proposition confronts the country in favor of eliminating the courts from this domain of justice and in lieu thereof of substituting an autocratic rule of administrative authority, without any Congressional investigation whatsoever.

There are also other and exceedingly important questions which demand Congressional investigation and public scrutiny in the light of such inquiry. Some of these questions are more important than those determined by the Senate investigation of 1886.

The magnitude and importance of the commercial, financial, and industrial interests involved repel the very idea of any radical legislation in advance of such inquiry as that here suggested.

Beyond all doubt, a thorough Congressional investigation of the various commercial, economic, and political questions involved in the general subject of railroad regulation in this country would develop results quite as salutary as those realized in Great Britain. It may also be stated in favor of such action that the two committees of Congress, as at present constituted, are admirably fitted for such inquiry.

In his recent annual message to Congress, President Roosevelt referred to the railroads as "the arteries through which the commercial lifeblood of this nation flows;" and in urging the importance of investigation said: "The whole history of the world shows that legislation will generally be both unwise and ineffective unless undertaken after calm inquiry and with sober self-restraint."

INTERSTATE COMMERCE COMMISSION,
Tuesday, April 29, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. A. C. BIRD, OF CHICAGO, ILL.

The CHAIRMAN. What road or system are you connected with?

Mr. BIRD. The Chicago, Milwaukee and St. Paul Railway Company.

The CHAIRMAN. What are the principal points that that line reaches?

Mr. BIRD. That line is operated in eight States—Illinois, Wisconsin, and the peninsula of Michigan, Missouri, Iowa, Minnesota, North Dakota, and South Dakota. Its lines reach Omaha and connect with the system of roads running through Nebraska and west to the Pacific coast. In Kansas City its lines connect with the Kansas lines running to the coast, Denver, and all through the far West and the Southwest, Texas, and the Gulf of Mexico. It is directly interested in the traffic of many large cities, commercial centers, manufacturing and distributing points, such as Chicago, Milwaukee, Racine, St. Paul, Minneapolis, Lacrosse, Winona, Dubuque, Cedar Rapids, Des Moines, Sioux City, Sioux Falls, and the great Northwest wheat belt, which lies east of the Missouri River in the Dakotas and extends northward to Fargo. It is in touch with the general traffic of the country, as well as through all the States I have named.

If you please, Mr. Chairman, I am not a public speaker, and I can not easily suffer interruption and preserve my thought, and if I may be permitted to go forward with my statement without interruption I would prefer to do so.

Mr. BLYTHE. Just at this point I would like to ask Mr. Bird to state his services with the Milwaukee and St. Paul in a general way, in order that the committee may be informed of his means of knowledge.

Mr. BIRD. I am the third vice-president of that company. I have been connected with the company twenty years in various capacities. I have heard and read a good deal of what has been said on the subject of the necessity of the proposed legislation, and I have attempted to keep in touch with what has been said in this committee room in favor of the bill. I understand that the bill in contemplation is the Corliss bill, and that that clause of it by which it is proposed to confer upon the Interstate Commerce Commission greater power over rates than they have at present is more particularly under consideration.

That clause proposes to give to the Commission the power to fix rates after complaint and investigation, and to enforce their orders by a process which sets aside the usual order of procedure and denies to the railway owner the rights of property which are conceded to all other property owners.

The right to fix a rate and to collect it is the essence of railroad property, and to take away that right and vest it in a board is to deprive the stockholders of their property without due process of law. Many reasons have been urged in support of this unique proposition, and the principal ones which have attracted my attention are:

First. That serious abuses exist, and therefore the proposed measure should be adopted to put an end to them.

Second. That the orders of the Commission are disregarded, and certain cases have been cited and elaborated upon to show that an emergency exists which justifies an unusual procedure. The cases upon which great stress has been laid are the Milwaukee Chamber of Commerce grain rates case, the Eau Claire lumber rate case, and the food rate case of the Northwest. At the proper time I will make some further statement in regard to these cases.

Third. The practical abolition of railway competition.

Fourth. It is said that for the first ten years under the law the carriers as well as the public and the Commission believed that the Commission had the power to fix their rates after investigations, and that the orders of the Commission were promptly complied with; that the public was well served and satisfied.

Fifth. That the right of eminent domain enjoyed by carriers is a sufficient reason for depriving the carriers of all other rights.

Sixth. That, aside from the prevalence of secret preferential rates and rates which are unreasonable per se, relatively unreasonable rates prevail generally, and no remedy is available unless the Commission is clothed with the arbitrary power of the enforcement of its own opinions.

These are the principal reasons that have come to my attention which have been urged in support of the measures now under consideration, and I would like, if you please, to touch upon these matters as briefly as possible from the standpoint of everyday experience.

I am not versed in law, and I can not undertake to view this subject from a strictly legal standpoint. I claim some practical knowledge of the practical side of these questions.

The first great complaint is well founded. There is not an official of any of the railways of any prominence or weight who will attempt to deny that the railway service has been honeycombed with secret preferential rates, which, to use an old popular phrase, make the rich man richer and the poor man poorer.

Nor is there a respectable railway official of responsibility or authority who will not admit that that one abuse adds more to the difficulties, the anxieties, and the perplexities of railway management than all others combined; and speaking for myself, for the company which I represent, and for the class of officials of which I am one, I think the unanimous desire of railroad people is to aid in the enactment of measures which will do away with that great, admittedly great, and flagrant abuse. At the proper time, if you permit—at this time, perhaps, as well as any—I wish to make a suggestion that is not an original one (it has already been made to this committee), but I wish to add the weight of my opinion to what has been said on that subject.

The original act, or the act as soon afterwards amended, provided penalties for this class of offenses; it was made criminal. The committee is well advised of all those conditions, that the offense has been made infamous, not only criminal but infamous, because punishable by an infamous punishment. The very nature of the case is such that if the offense is committed, or when an offense is contemplated, the two parties to the offense surround the case with every possible safeguard, and there are so many ways of violating the spirit of the act in that respect that it has always been exceedingly difficult to obtain evidence sufficient to bring the guilty parties to punishment.

So much has been said regarding the reasons why railroad officials who are morally certain that the offenses exist will not testify that it

is unnecessary for me to amplify upon that point, because all that has been said by the proponents of this measure is freely admitted by railroad people. This is the great crime of the times—secret preferential rates—and it seems to me that this committee may wisely attempt to devise means by which those crimes can be reduced in number and the practice itself discontinued.

If I conceive the situation properly, the method, the whole responsibility, of the convicting and bringing the guilty parties to justice devolves upon the Commission and the limited agencies which it is able to maintain. And, for the reason I have given, they have met with the utmost difficulty. It has been almost no thoroughfare.

Every railroad officer, stockholder, director, manager, or official is much more in position to find the facts and ascertain the means by which the truth can be ascertained in the form of testimony, and has much more complete and satisfactory means of so ascertaining it than any expert of the Government has so far been able to employ. As the bill stands, if the law could be so amended as to abolish the personal feature of this penalty and to levy a just and proper fine upon the offending carrier for each offense, that act would instantly convert an army of 100,000 experts into detectives interested in bringing about the enforcement of the law. I speak in this manner after an experience of a good many years, and I know that there are thousands of cases where to the public the existence of the evil is morally certain, but none but an expert knows how to get evidence such as is necessary to enforce the penalty.

It has been asserted here that there are a number of cases that show where the order of the Commission is disregarded, which proves conclusively that this is an emergency and that new measures must be adopted. I would like to add a few words, if you please, in regard to the first subject. I find nothing whatever in the proposed measures that touch upon the chief cause of complaint. I do not see how it is possible that the mere power on the part of the Commission to fix a rate after a complaint will enable it or any other tribunal to detect and punish the grave secret offenses so often and so properly referred to. I find nothing whatever in the bill that even approaches that subject.

Regarding the second argument, that the orders of the Commission are disregarded, the Milwaukee grain-rate case was a peculiar one, and I am glad that the chairman of the Interstate Commerce Commission is here to hear what I have to say on that subject, and correct me if I fall into error. The complaint was brought by the Milwaukee Chamber of Commerce against the Chicago, Milwaukee and St. Paul Railway Company. In the course of the proceedings other roads became parties. I am not sure but a number of them were originally parties to it; but others were added. Also, in the course of the procedure the Minneapolis Chamber of Commerce, a rival (and a very strong rival) of the Milwaukee Chamber of Commerce, also became a party to the controversy. In order to make that case clear to the committee a map ought to be here to show the geography of the lines involved, but I will try to describe them to the committee.

The St. Paul Company has a line running west from Milwaukee through Wisconsin to Prairie du Chien and westwardly through the northern counties of Iowa to its western border, and beyond into South Dakota to the Missouri River. This line is known as the Iowa

and Dakota Division. It is as near a direct east-and-west line as exists anywhere. It also has a line, one of its main thoroughfares, running northwestwardly from Milwaukee to La Crosse and thence westwardly through the southern portion of Minnesota and beyond into South Dakota, known as the Southern Minnesota Division, parallel to the first described line, to its intersection with the James River Valley, which is the center and heart of that portion of the northwestern spring-wheat belt which is reached by the lines of the St. Paul Company, with one exception. It also has a line running southwardly from Minneapolis through southern Minnesota, and which crosses the Southern Minnesota Division and thence southwardly to Mason City, Iowa, where it connects with the Iowa and Dakota east-and-west line first described.

These lines from the wheat belt in western Minnesota, western Iowa, and South Dakota to Minneapolis are right-angle lines in each case. Its lines to Milwaukee are direct lines. There exist a number of rival lines radiating westwardly and southwestwardly from Minneapolis, tapping the lines of the St. Paul Company which I have described at acute angles. One instance will be sufficient to illustrate. The Northwestern system, including the Northwestern road proper and the St. Paul, Minneapolis and Omaha, intersects or parallels the St. Paul Company's lines in southwestern Iowa, southern Minnesota, and South Dakota. Pipestone, Minn., is one point of direct contact which is sufficient for the purpose of explanation, but the two competing lines are parallel for a long distance east of Pipestone. The lines of the Great Northern Company radiate like the spokes of a wheel from Minneapolis, cutting the lines of the St. Paul, and the north and south lines in the James River Valley, at angles in every direction.

Then the Minneapolis and St. Louis Railway Company has lines extending southwardly and westwardly from Minneapolis, largely parallel with the lines I have described from Minneapolis, and those lines radiate westwardly and southwardly, crossing the St. Paul lines to Chicago, Milwaukee, and Minneapolis at various angles and distances from the principal market of the competing companies, Minneapolis. The Chicago and Northwestern system has lines southwardly and southeastwardly from Minneapolis to Milwaukee and Chicago. The Illinois Central has lines through the northern portion of Iowa east and west, not touching the Milwaukee market, but reaching Chicago only.

Now, the complaint of the Milwaukee Chamber of Commerce was that the rates from the wheat district, say, from Pipestone to Milwaukee, did not bear a just relation to its rates from that point to Minneapolis; that the differential was not justified by the additional haul; that the distance from Pipestone of the two rival markets was disproportionate; or rather that the differential against Milwaukee was disproportionate with the difference in distance. Proceedings were brought under that clause of the law which requires that rates shall be comparatively just and reasonable.

It seemed to me, representing the interests of the St. Paul Company, that there was much foundation of justice in the complaint. I, like many others, was influenced by what appeared to be the interests of my company. There were many reasons why it would have been profitable to have hauled a larger proportion of the wheat crop to Milwaukee, and the principal defense of the conditions complained of was

the importance of the Minneapolis market as a millers' market and the large volume of business which resulted from the manufacture of the wheat into flour. The order or recommendation of the Commission in the case seemed to be eminently just, and at first it was regarded as a wise, prudent decision. There was no attempt by the Commission to fix the rates to Milwaukee from any of the wheat-producing districts.

The controversy was as to the relation of rates, and the substance of the order was that a properly constructed distance tariff which was designated by the Commission should be used by applying it to the rate from a given point to Minneapolis, using the distance traversed, and from that same point to Milwaukee, using the distance in that case also, to see what the rate difference was, and that difference should be substantially the differential in lieu of the differential complained of. I think the Chairman of the Commission will correct me if I am wrong. I do not attempt to follow every detail.

Necessarily, all the railways concerned in the complaint, or concerned in its settlement, convened their traffic officers to revise their rates so as to bring them into harmony with the decision of the Commission.

But practical difficulties that had never before been encountered in that precise way showed themselves, so that it was found impossible (practically impossible) to make any substantial modification of the rates, because companies that were rivals of the St. Paul company had the same standing that the St. Paul company had, and they were entitled to the application of the same principles that was to govern the St. Paul Company, and the Minneapolis Chamber of Commerce was entitled to all the benefits that could be obtained from the Commission's decision, precisely the same as the Milwaukee Chamber of Commerce. It soon became apparent that the distance of the St. Paul Company from Pipestone to Milwaukee bore a greatly different relation to its distance from Pipestone to Minneapolis from that which the distance over the Northwestern from Pipestone to Milwaukee bore to its distance from Pipestone to Minneapolis, the Northwestern Company's line from Pipestone to Minneapolis being the short line, and its line to Milwaukee being the long line, and the St. Paul Company's line to Minneapolis being the long line, and its line to Milwaukee being the short line.

So that if the St. Paul Company reduced its rates to correspond with its own individual mileage the same line of reasons and the same recommendations of the Commission would require the Northwestern to reduce its rate from Pipestone to Minneapolis; and so we would have the rate of first one road going down and then the other, and so on back and forth without end a whirlwind of reduction, without in the least changing the relation of the rates, which was the sole cause of the complaint.

The modifications of the rates under these circumstances were immaterial. The Milwaukee Chamber of Commerce people were dissatisfied, and in the course of time they petitioned for a further hearing, which was granted. The circumstances and conditions affecting the case was explained to the Commission.

My recollection is that one member of the railroad committee then and there, by the consent and approval of all the others, made this suggestion, that the Commission might fix rates from all the territory involved to the two competing markets, and the railroads were pledged to accept them in full. If I recollect right the chairman of the Commission himself disclaimed for the Commission their fitness for under-

taking that line of action and assumed that it was the duty of the railways to adjust their rates as closely as possible to the orders or suggestions of the Commission. They were asked to renew their efforts and to see what could be done. The Milwaukee Chamber of Commerce was represented at that hearing by a number of its experts who had been engaged in traffic more or less; they were employed by their chamber of commerce to supervise this case.

The Minneapolis Chamber of Commerce was represented in like manner, and the railway companies then proposed that if they could agree unanimously upon a schedule of rates, that the railroads would adopt those figures. They failed of any agreement and that was the end of the case.

Mr. Chairman, one of the gentlemen who cited that case to this committee to show how necessary it was to clothe the Commission with additional and unusual power, knew as well as I know, as well as the chairman of the Commission knows, the truth of the case, and I want to add that a very large proportion of the complaints with which I have to deal have been instigated and backed and pressed under just such circumstances.

Another case referred to, upon which much stress was laid, is the Eau Claire lumber-rate case. Eau Claire is a railway point, and is located upon the Chippewa River, which empties into the Mississippi River at Reeds Landing. There was at that time an immense production of lumber at Eau Claire, and instead of being shipped by rail it was dropped into the river and rafted to points on the Missouri River, and the low cost of transportation by water, in connection with prices at Mississippi River markets, was such as to put upon the lumber at Eau Claire a value so great as not to permit it to be shipped to the Missouri River markets at the then rail rates. It was a source of continual regret to us, having a line down the whole length of the Chippewa River, not to be able to secure a substantial portion of the immense tonnage produced at its very doors and floated past it.

In the more palmy days of the northern white pine, when the traffic to the West from the Missouri River cities was immense, there had been many discussions relative to the relation of rates from various manufacturing districts to the Missouri River cities. It was at that time the largest item of west-bound tonnage hauled on the roads west of Chicago. There was very great rivalry between the manufacturing points and rival carriers serving competing districts, and as far back as 1874, when I was first connected with a road interested in that traffic, meetings were held, and discussion of tariff rates to be made to and from the principal points were frequent. Every effort for a term of years was a failure. At one time there was a general convention of the railway people involved in the question, as well as the lumber people of the great white pine districts of Michigan, Wisconsin, and Minnesota. It was proposed at that time (I think that was in 1874 or 1875) that the lumber interests should appoint delegates having authority to represent their constituents from the various districts, and that they should then agree upon rate differences that should apply, but they failed to come to any agreement.

The railway companies thereafter submitted the matter to railway arbitration. I have nothing to say in defense of the principles which were recognized as controlling the arbitrator in his conclusions. They were bound to adopt the differences which he prescribed. He visited

the entire country and received cooperation from every district except the district of Eau Claire. The gentlemen there at that time did not understand the importance of the question. The result was that the arbitrator failed to get the information that was necessary to give Eau Claire a fair representation, and it was believed by me and by others at that time that Eau Claire was rated relatively too high.

In the course of time it became evident, as I have already said, that the lumber could not move to the Western markets by rail, and the middlemen of Eau Claire, and, I think, only one lumber firm, formed an association known as the Eau Claire Board of Trade. Some time in 1882 they filed a complaint against the St. Paul Railway Company, alleging that the rates from Eau Claire were relatively unreasonable as compared with the rates from other points, which were secondary markets, and that the distance of the St. Paul Company from Eau Claire, as compared with the distance from other manufacturing points, was such as to show the great discrepancy as to rates. The Commission rendered a decision which appeared to many to be just. The rate from Eau Claire to the Missouri River was not to exceed the rate from La Crosse and Winona by more than $2\frac{1}{2}$ cents. The railway people did not fully comprehend all these conditions that would ultimately affect the situation.

They looked more to their own interests, and as I say, it seemed to the management of the St. Paul company that the decision was just, and would redound greatly to the benefit of the St. Paul road. All the rival carriers interested in many other districts besides Eau Claire, having lines from Eau Claire to St. Paul and southwestwardly to the Missouri River, reaching the Missouri River on the shortest possible haul to a Missouri River basic point, having a line connected with a part of their system from La Crosse and Winona, also, immediately reduced all the other rates including Minneapolis, to the same extent as the St. Paul company reduced the rate from Eau Claire.

The St. Paul company at that time felt aggrieved at this action, influenced somewhat by its own interest; but after having demonstrated clearly that it could not change the relation of rates, which was the basis of complaint, it restored its original Eau Claire rate, and resumed the old differential which was complained of, and all other rates were restored to the previous condition.

After more calm reflection and consideration of the matter, it occurred to me, and became very apparent, that the same trouble existed in the lumber rates that existed in the Milwaukee Chamber of Commerce case. I attempted to explain a moment ago that the relative rates and distances on one road were diametrically opposite to the rate and distances of other lines, and I do not see at this time how it would have been possible to have enforced the orders of the Commission. The gentleman who cited that case also knew the facts in the case.

The other case, and the only other case to which I wish to refer—

Mr. BLYTHE. Mr. Chairman, if I may be permitted to suggest to Mr. Bird a point which I wish to have brought out, I should like to do so at this point.

The CHAIRMAN. Very well.

Mr. BLYTHE. Would you be kind enough, Mr. Bird, to explain to the committee the manner in which the award of the board was originally made, who was a party to that award, why, if at all, the rate

was restored, how long it was in operation before the Eau Claire case was heard, why it was restored, and whether or not it is now in effect?

Mr. BIRD. What is the exact point you wish answered, Mr. Blythe?

Mr. BLYTHE. What led up to the award of the board, first?

Mr. BIRD. I only touched upon that briefly. The facts were that the railroad companies were competing with each other for the lumber traffic of the white-pine districts, from Chicago, from Wisconsin and Michigan and Minnesota points; controversies at that date centered largely on lumber going to and beyond Sioux City, Omaha, and Kansas City, which were then the gateways to the plains of Kansas and Nebraska, the great consumers at that time of lumber. The rival manufacturing districts and locations were without number. At that time Chicago was the prominent lumber market, by reason of the production on the east shore, and also the west shore, of Lake Michigan, which lumber was brought in enormous quantities by sail vessels to that market; and Chicago was recognized as the central basic point for all lumber rates. Milwaukee was then a manufacturing point of some prominence.

Racine was also an important point, by virtue of water transportation; and Menominee, Marinette, Green Bay, Oconto, and along the west shore of Lake Michigan, and then the Eau Claire district, the Chippewa Falls district, and Duluth and other places in that vicinity; and Minneapolis, by virtue of its river connections with the northern pine of Minnesota, was one of the larger points—I think the second largest—next in importance in volume of business and trade to Chicago. Various Mississippi River cities were also important factors. A great many railways were interested solely in the transportation of lumber from Chicago to the Missouri. Some were interested only from Stevens Point or Chippewa Falls; others from one town, and still others from different places, so that there was an interlacing of railroads, one having an interest here and another there, and the conflict was almost irrepressible.

The parties to this arbitration were the railroad companies leading from Chicago and all points in Michigan, Wisconsin, and Minnesota to the Missouri River, and some leading to Kansas City and Atchison, some to Sioux City and to no other points, and some to Omaha and no other points, so that you see there was a great complication of conditions. It was only after a warfare of two or three years, and after many failures to get a mutual understanding, that as a final resort, as a forlorn hope, an attempt to arbitrate by one man was made. Whole communities would rise up and say, "You are destroying our business, and if we can find any way of diverting our general traffic from you, we will do so;" and it was diverted, and the bloody hand was extended to the railroads of every district, and there was no remedy except arbitration.

Now, with the exception of a short interval following the orders of the commissioners those differentials have applied, have governed, since 1874 or 1875, excepting as they have been subsequently modified by the construction of new lines which made new railroad geography, and except as they have been affected by the discontinuance of manufacturing in various districts; the pine having been all used up; so that those differentials are to-day the law of the land. Is there anything more you would like to have me answer?

Mr. BLYTHE. Nothing more now.

Mr. BIRD. The other case, and the only other one to which I wish to refer, is what was known as the food-rate case. It is reported on page 48 of the Fourth Annual Report of the Commission for the year 1890. If my recollection is accurate, this case had its origin at a time when there was an unusual depression in the value of grain at home and abroad. The price of coarse grain in the Northwest was very low.

There was a considerable period during which the farmers burned their corn for fuel rather than buy coal or wood, and Congress passed a resolution directing the Interstate Commerce Commission to investigate the conditions and facts bearing upon that subject. I think Col. William R. Morrison was chairman of the Commission at the time, and repeated investigations and sittings at various places were held by the Commission, and a great mass of testimony was taken. Probably this was in 1890.

Mr. KNAPP. Judge Cooley was chairman at that time.

Mr. BIRD. Mr. Morrison was present and took a prominent part in the investigation. I think you are right, that Judge Cooley was chairman.

The rate on coarse grain from Missouri River points to Chicago was either 20 cents or 21 cents. The Commission not only made its report, as I suppose, to Congress, but it issued an order on the railroads directing a reduction of freights to a maximum of 17 cents to Chicago, versus either 20 cents or 21 cents, and 12 cents to the east bank of the Missouri River, which was used as a portion of the through rate to the seaboard, in lieu of 15 or 16 cents. Before the report was submitted, or soon after its promulgation, there had been a material advance in the value of food products. I do not know how much it was, but I think it was 25 to 30 per cent. At any rate, the railroad companies ignored the order and did not make any change of rates. Soon thereafter there was organized in the Northwest, including northwestern Iowa, the Northwestern Iowa Grain Dealers' Association, and by contract with certain counsel on the Commission basis, suits were entered in the United States courts for the reclamation of all the excess charges collected on their grain over and above 17 cents to Chicago, between the time of the order and the time when this suit was brought.

This suit was against three or four prominent Western railways—grain carriers—and I believe the amount sued for was in the aggregate \$3,000,000. I do not remember the exact period of time covered by those suits.

The case was tried before Judge Shiras at Dubuque, Iowa. The railroad company set up a demurrer that it was unlawful, having published a rate in accordance with law, and having enforced it in accordance with law, to refund any portion of it to the middleman or grain dealer, and the demurrer was sustained, in such language and under such terms as made it very apparent what the opinion of the court was in regard to it. The petitioners were granted leave to amend their bill. But that permission was not availed of, and the suits were practically ended at that time.

Contemporaneously with the suits a petition was filed with the Interstate Commerce Commission regarding the rate as a future proposition, and an effort was made to prove that the rate complained of was a result of the agreement between the railroads in contravention of the Sherman antitrust act. I remember a number of the hearings before the Commission conducted by Commissioner Knapp. I do not

remember how many there were, nor why the case was dropped; but it was made very apparent that if the railroad companies in that case had complied with the original order they would have paid out or lost a large sum of money without just cause, a loss such as has not yet been sustained by any other tribunal as being a just proposition.

The third reason given for the proposed unique legislation is the practical abolition of railway competition. It seems to me, Mr. Chairman, and gentlemen, that the assertion that railway competition has ceased comes from a consultation of fears rather than a knowledge of the facts. I have watched the proceedings which have been referred to. It has been my duty to watch closely the result of all these alleged combinations, and I hope you will give me the credit for sincerity when I say to you that the tide of competition was never as severe as it is to-day. The complications which grow out of this competition seem to be increasing continually, and I never knew the time when railway officials and railway agents were so necessarily keenly alive to the situation as now. Competition at a given point, or between two given points, between rival carriers is one thing, often severe and often destructive, but never so efficient, so forcible, so permanently an element of complication as the rivalry between communities.

If you will think for a moment how the railroad map of the United States looks, you will find such a vast number of complications by reason of one line or one system reaching one market point, and other systems reaching other points in part or in full, one line or system of lines centering in New York and reaching Chicago, and another line centering in some rival market; and if you will but understand that public favor is the very breath of our lives, if you will understand that communities are as selfish, are as unscrupulous as individuals in effect, in actual fact, and practice, you will find that there is no end to the pressure brought upon the traffic officers. I find in this honorable committee a gentleman whose interests center largely in one important city reached by the lines of the St. Paul Company, a city in which the St. Paul Company is recognized as the leading road. Doubtless he is as conservative, as considerate, of all property rights as anybody, and yet the community which he represents is as jealous, as remorseless, in efforts to get and maintain advantages over rival communities as any man is to gain a preference over his immediate competitor.

That practice permeates the whole railway situation, and the railway official who fails to perform the duties or secure the rates which a community wants, which are held to be necessary to its welfare and progress, is regarded as a public enemy and his company is punished accordingly. Nearly every important community in this wide land has organized a greater or less number of associations, trade bodies, boards of trade; they have appointed their experts, many of them taken from the trained ranks of the railway companies, and the official life and existence of these men depend upon their finding flaws in carriers' methods and discrimination in rates. I say that contention and competition are to-day greater than they ever were before.

Mr. DAVIS. You speak of the rivalry among railroads, I suppose, in order that the conclusion may be drawn that the rivalry may necessarily control and have a tendency to reduce rates. It has been stated before this committee by those who have appeared here that the railway rates are generally higher than ten years ago. Is that true?

Mr. BIRD. No, sir. Quite the opposite is true. I can not dispute

the statistics furnished by the Interstate Commerce Commission. They have means of information which are beyond my controversy. But speaking for the great territory in which I am interested I know that up to the last period of which we had any account there is a continuous decrease in the rate per ton per mile.

Much stress has been laid upon the fact that in the official classification—the western roads, our roads, are not included in that—in the official territory, that many articles have been raised into a higher class, and it is contended that that has a great effect on the rate per ton per mile. I am not so sure of that. I know that many changes have been made, but I have not heard a single word to prove that the present classification is such as to create an improper relation between various articles, nothing to show that in the crudities of early railroad evolution and management, the various articles had a proper relation to each other; and it is a very important question, and perhaps it is for the Commissioners to prove that the present relation of articles is not justified and that the old relation was justified.

But no matter if the changes in classification were unwise or did in some cases result in unjust discriminations, in any legislation which strikes at all property rights alike, and strikes roads which are not connected with the alleged offenses, is clearly unwarranted and unjust. You can not pass a law to fall upon roads who are known to be guilty if it falls also upon those roads in every other part of the country against whom no such complaint can be justly made.

Mr. RICHARDSON. Is it not a fact that the traffic relations between the railroads and the public are greatly improved, and that there is a better understanding to-day than for years past?

Mr. BIRD. Undoubtedly. I speak guardedly when I say that I am in touch with a great number of people directly interested in traffic and railway regulation, and I never had so few complaints and my company never had so many friends as it has to-day; and I want to say further, and to lay great stress upon it, that my observation of the complaints, and of what has been said before your committee, is that complaint comes primarily from the man who has no right—legally he has, but as a matter of fact he is a man who never pays the rate—the middleman. Nine-tenths of all the complaints we have had comes from the man who says to himself:

If I can have this rate changed so as to bring this traffic to my city I can get a commission on that business, and if it goes to Minneapolis or some other place I can not.

Mr. RICHARDSON. It does not come from the producer?

Mr. BIRD. The producer has very few complaints, and I want to say that the theory usually advanced by professional complainants, that the producers, the farmers, the little manufacturers and shippers are held in terror by the railroads, is utterly false.

Mr. BLYTHE. I would like to have you refer to the testimony taken by the Interstate Commerce Commission in Chicago as illustrating the effect of competition in bringing about the conditions you refer to.

Mr. BIRD. It is notorious that the railway officials, or many railway officials in Chicago, last January—and I must admit that I was one of the number—testified that they had violated the law in conceding rates to shippers which were not provided by the tariffs. I refer to the packing-house traffic.

Mr. RICHARDSON. That was a rebate system?

Mr. BIRD. That was the rebate system, so called. The shippers obtained lower rates than were published.

Mr. RICHARDSON. Why do you give the rebates to one interest, or were they given to one interest, and not to another?

Mr. BIRD. They were given to all alike.

Mr. RICHARDSON. Then who had a right to complain?

Mr. BIRD. I am not lawyer enough to discuss that from a purely legal standpoint, and I am not willing in any degree to assume to defend the practice of conceding rates that are not duly published, even if they do not result in undue preferences in favor of one person against another. I believe thoroughly that all rates used by the public and the railroads should be duly published, and the only safety lies in that proceeding. Any other method leads to corruption and that which destroys one man's business and builds up another's.

There is no possible deflection from the straight line in that direction without leading to abuse. But the actual practice itself did not, I believe, in a single instant result in one shipper getting a lower rate than another. The competition there originally was between localities. Kansas City is the great packing-house point of the West—the largest. Atchison, Leavenworth, St. Jo—St. Jo especially is an important point—South Omaha is perhaps next in importance to Kansas City—Sioux City, and St. Paul. Many roads reach Kansas City that do not reach these other points; some of the roads reach all the points. The St. Paul company's lines reach all Western packing points except Atchison and St. Jo.

There was a continual strife between not only the carriers, but the merchants who handle live stock. They wanted the rates arranged so that the packers in their towns could buy live stock freely.

It is asserted that one town is reaping an advantage, and then a man whose road is reaching only one or other of these places, in a weak moment, says: "It is absolutely necessary that I get a part of this," and he gives a secret rate. And it is absolutely futile to expect that a private rate conceded to an industry like that can be kept private. You may not be able to prove it, but it is inferred in a short time with absolute certainty, and the knowledge of that spreads like summer sheet lightning, and everybody and everything is involved, and if you do not put yourself on an equality with the other carriers and other markets, your business is gone in a night. It is not like a steamboat, which a man can tie up to the shore if he has not business for it; but you must run your railroad business anyhow. The public have a mighty power, and they exercise it. It is the cause of this disgraceful condition revealed in the investigation by Chairman Knapp and his associates.

Mr. BLYTHE. I wish simply to state to the committee, if they will permit me, one thing.

The point I want to have Mr. Bird emphasize is that during a long period not a single pound of packing-house products or dressed beef was moved east from the Missouri River except upon the secret rebates, and that was disclosed in the first case, where it was admitted in Chicago, and it was said that that was the result of the very stringent, strenuous competition existing not only between railroads at Kansas City, but also between Kansas City itself as a producing market and its rivals in the same trade.

I thought perhaps I could state that more briefly than by asking Mr. Bird to state it.

Mr. BIRD. That is correctly stated.

The fourth reason alleged for the immediate passage of the bill pending seems to me a great fallacy, and it seems to me to have been stated frequently without proper consideration of the facts. It is, that for the first ten years, under the law, the carriers as well as the commissioners and the public understood that the commissioners had the power then which it is now sought to confer upon them by the pending measure, the power to fix rates upon any commodity after investigation of a complaint; that their orders were complied with and that the railroads and the public and the Commission were satisfied. That is what you may properly infer from what has been stated.

I would like to read a brief extract from the Interstate Commerce Commissioners' report for 1891. The act was passed in 1887, and, practically speaking, it was hardly in effect until the beginning of the year 1888. Of course, it was in effect upon its passage, but the machinery was not in working order. In 1891 the following appeared on pages 14 and 15 of the report for that year:

The Commission, not being invested with power to enforce its own orders, is dependent for the efficiency of such execution and enforcements upon the courts.

That was practically in the third year of the law. That comment is followed in that report by references to many cases upon which the Commission had issued orders which the railroads refused to comply with. So that it seems to me that the argument which was elaborated so much upon in the earlier investigations before this committee may be set aside.

It may be true that it was not for ten years, more or less, that a distinct opinion was rendered by the Supreme Court. It is a fact that before that decision the orders of the Commission were not by any means always enforced. I think it very likely, and in fact know it to be true in the district in which I am acquainted, that in most cases the railway companies are glad to act upon the recommendations or orders of the Commission; and it is only when some vital principle is involved upon some matter, perhaps of apparently little consequence, but of great importance as a precedent, that the railroads are disposed to stand upon what they conceive to be their lawful rights.

Another unique argument in support of a unique measure is that the railroads enjoy the right of eminent domain, and that that is a sufficient reason for depriving them of all other rights. That matter has been touched upon very ably before the committee, but I wish to add a word or two to what has been said, and to repeat what has been said, that the right of eminent domain is conferred upon the carriers, not for any benefit to the carriers, but because it is essential to the welfare of the American people, and that without that right being conferred upon the carriers the American people must suffer great loss and inconvenience. It is not conferred upon them as a matter of favor.

Assuming that the right of eminent domain gives the Congress, or any judicial body, the right to regulate interstate traffic, here is a suggestion which I wish to make: If a railway company seeks to enter upon and use the property of some individual, a private person, it is not permitted to do so until it has either agreed with that person as to the price which shall be paid for it or until the price has been defi-

nately determined by the legal process of the courts and paid to the owner of the property.

Here is a case where it is proposed to enter upon the property of the railway company by private individuals or by the public—which is but an aggregation of private individuals—to take possession of that property, and then find at some time in the future whether it has a right to do so or not. And when that determination is reached, the property has been confiscated—in whole or in part confiscated—so much of it as involves a reduction of its rights without any possible hope of a remedy or of compensation to the owner of the property; and if the public—if the private citizens—can not be deprived of their rights until the courts have determined the value of those rights, why should the public or private citizens obtain possession of the property—the essence of all railroad property—until the courts have decided that it is right, unless the owner of the property, the carrier, admits the justice of it, or, in other words, agrees with the person as to the price to be paid.

Mr. RICHARDSON. Is not that upon the theory that the railroads perform governmental functions, and in the performance of these governmental functions they should be expected to discharge their duty in the same manner as the Government; is it not upon that theory?

Mr. BIRD. I do not know. I should prefer that that question should be asked of a lawyer. But this much I will say, that aside from all I have said in respect to the right of eminent domain, there is this fact, that the carrier pays an exceedingly high price sometimes for that right. The private carrier, or a carrier by water, which Congress does not assume to regulate—

Mr. RICHARDSON. I simply called your attention to the fact of the distinction, as I assume it to be, between the individual and the Government, as to the right of eminent domain as exercised by the individual and by the Government.

Mr. BIRD. It may not be exercised as a governmental function. The carrier does perform a governmental function, but he has a right to be paid for that performance; and there is the question, Shall he perform that governmental function without due compensation? And he does pay a price for the right of eminent domain which nobody else ever pays. The private carrier, not being satisfied with the volume of business, can tie up his vehicle and not perform any service; but the common carrier must continue to run; must perform that service whether he wants to or not. These functions must be performed continuously to pay for the right of eminent domain, and sometimes for a year that service is performed without any profit whatever or at a loss, and that may leave the stockholders in bankruptcy some lean year.

But the carrier must perform those functions, and carry the passengers and all the property intrusted to its care with reasonable celerity and dispatch, although it may not be able to get one-half of the cost; but if the carrier gets back only 99 per cent of the cost of carriage, there is no reason why it should be taxed that 1 per cent.

The CHAIRMAN. If you will submit to an interruption, we will bring this hearing to a close at this point, as we wish to have a brief executive session of the committee.

(Thereupon, at 11.50 a. m., the committee went into executive session.)

INTERSTATE COMMERCE COMMISSION,
Thursday, May 1, 1902.

The committee met at 10.30 o'clock a. m., Hon. Loren Fletcher in the chair.

Mr. FLETCHER. Evidently the chairman is detained somewhere for a few moments, and I think we had better proceed. Mr. Bird, will you resume your statement where you left off on Tuesday?

STATEMENT OF MR. A. C. BIRD—Continued.

Mr. BIRD. Mr. Chairman and gentlemen, the greatest stress laid upon the necessity for the measures proposed by the proponents of the bill has centered largely under two heads. I refer especially to the various statements or arguments made by several Interstate Commerce Commissioners.

It was announced with considerable force first, that rates were advancing; that not only had the general volume of business largely increased in the last year or two, but that the rates per ton per mile had advanced. One of the commissioners said that the statistics of his office showed this to be a fact. I am not quite clear as to the precise phraseology. I have not the same means, or in fact any means at the present time, of knowing the aggregate results of the operations of all the roads in the United States. What was said may be true with respect to the group of roads lying east of Chicago, east of the Mississippi River, and north of the Ohio River. What are known usually as the Eastern trunk-line roads are great carriers of tonnage, and I do not know and can not know at this time the precise results of their operations during the last year.

Speaking, however, for the railroad company which I represent, and for the group of roads in the Middle West, of which the St. Paul company is a fair type, I wish to renew the denial I made day before yesterday, and to reassert that the rate per ton per mile is decreasing, and to say that that fairly represents the general conditions in the Middle West. I wish to give to this committee a very brief statement of the facts regarding that particular subject.

For the fiscal year ending June 30, 1900, the St. Paul company hauled 3,357,456,584 mile-tons, and it earned on that traffic \$31,287,566.16, the rate per ton per mile being \$0.00930. The operating expenses of the company for that period was \$26,729,608.04.

Now, the operations of the succeeding year, which is the latest period for which we have the statistics were as follows: Mile-tons, 3,639,977,919, upon which was earned \$31,444,379.12. The operating expense of the company for that year was \$27,251,723.51, an increase of mile-tons of 282,521,335; and the increased tonnage brought an increase in revenue of \$156,718.96. But the increase of expense of operations for that year was \$577,884.63. The rate per ton mile on the operations of the larger business was \$0.00069, a little more than 7 per cent decrease.

As I said before, this is a fair representation of the condition of affairs in the Middle West in all those so-called larger systems of road, and it fairly represents, in fact, all the smaller roads in that part of the country.

Mr. WANGER. Will you pardon the suggestion that that possibly does not answer the contention of the Commissioners. As I recollect their testimony, it was that there was no decrease in the rate per ton per mile of tariff charges and that the decrease in the cost of moving freight was brought about by reason of the very much greater increase of volume of cheap freights as compared with those paying high rates, and the illustration given was something like this: Nine tons are moved at \$1 and 1 ton at 20 cents, and that gives you an average tariff of 92 cents. Another year 1 ton is moved at \$1 and 9 tons at 20 cents, and you have an average rate of 28 cents, or a decrease in the cost of freight; the cost is less than one-third in one instance from what it is in the other, and that without any reduction in the rates, the difference being in the character of the freights hauled. Now, I understand your figures go simply to the gross amount of freights carried, and therefore we can not tell whether your tariff rates were reduced or remained the same.

Mr. BIRD. The figures which I present to you are prepared upon precisely the same lines as are the figures which go to the Interstate Commerce Commission. In other words, all they have in their possession is what they have taken from the figures which I have, which have been sent to them. The hypothetical proposition might be true, but it has not been proven. It is a mere hazard. If the supposition is correct, perhaps the deduction is correct, but there is nothing to show that the supposition is correct.

Mr. WANGER. My recollection is that the commissioners referred distinctly to the tariff schedules there.

Mr. BIRD. I will say something later upon that question.

Mr. WANGER. I assumed that you would want to meet the question.

Mr. BIRD. Yes, sir; but I have facts which I want to present. The next subject in my mind is the assertion that competition has disappeared, and that four or five men in New York may sit around a table and control the traffic destinies of this country; that the companies which were referred to are said to have practically merged the rate-making power into the hands of a very few men; that the result which is now apparent, and which there should be fear that it will be more apparent and more effective hereafter, is the disappearance of competition. Now, it was assumed by one of the commissioners, and I think it was Mr. Clements, that the mere maintenance of rates—that is, the effective prevention of secret preferential rates—would result in an increase of the revenues of the railways of the United States of \$20,000,000 a year. The assumption has been all the time that the revenue of the railway companies was reduced largely by secret preferences.

Of course, whatever amount was really paid out in that manner was so much off of the net rate, but the deduction is that the prevention of private rates—departures from the tariff—will in itself result in an enormous increase of the charges which the public must pay; that it will result also in a higher rate per ton per mile and a higher rate of profit to the stockholders.

I have been absent from my business since the 15th of March. I was called from a vacation trip to Washington, so that I have not been on the ground since the 15th of March. Very shortly after that period, or during the latter half of March, the regulation of railroads by injunction was first undertaken, and the roads in the middle West are under injunction, which has been the most effective means that

have ever heard of—in fact, quite effective—of putting a stop to abuses that have been so bitterly and justly complained of. It is not likely that railway magnates will risk a violation of the orders of the court. The remedy and the punishment is much more swift than it is in any other case, and I have proof that the injunctions are being respected.

Now, I obtained yesterday from the archives of the Interstate Commerce Commission the record of the open published tariff reductions that have been made since the injunctions took effect. It covers a period of about thirty days. The rates, which are now published and sent to the Commission and spread broadcast through the land, are substitutes in large part, if not entirely, for the practices which previously prevailed and which are now enjoined. They not only carry out in effect the reduced rates which were probably made by unlawful means, but being public in the hands of the Commission and of the public are much more widespread in their results than any secret rates could be. They are widespread—I mean as to the effects upon the revenue of the carriers—because being public they apply at all intermediate points. For example, private reductions between Chicago and St. Paul benefited a single shipper, but the rates now public apply to all shippers at Chicago and at St. Paul, as well as to all shippers at intermediate points whose rates had been greater.

Those reduced tariff rates are reported direct by the roads in interest, and I find that in about thirty days, including Sundays, which ought not to be included, there was an average of fifteen and one-half reductions per day. That does not include any of the reductions at intermediate stations which are brought about by publicity and by the operation of the long and short haul provision of the interstate act, so that there are an infinite number of reductions going on all the time from which the public are receiving a benefit and which have a potent influence in the reduction of the rate per ton per mile.

Now, it is a fact demonstrated by long experience that this process proceeds with increasing rapidity, and no matter what supposed combinations of railway ownership have been made, no matter what theory may have been drawn from those combinations, the fact remains that these reductions are going on with increasing velocity. These facts which I submit to you are not surmises, but actual information from the office of the gentlemen who say that competition has ended, from public records.

Mr. Chairman, when the interstate act became a law it was believed that it would prove to be a remedy for the evils of transportation—all the evils complained of. The testimony of the gentlemen who have been in charge of the execution of that law is that it has accomplished nothing which it was intended to accomplish; that it was a failure.

Mr. COOMBS. They claim that it was a success up to the time when the Supreme Court said that they did not have the powers which were originally contemplated under the act. As I understand, that is the position of the Commission. I do not think they claim that it has always been a failure.

Mr. RICHARDSON. Did not Judge Knapp admit, in answer to a question as to what improvement had taken place as to the commercial relations between the railroads and the public during the existence of the interstate-commerce law, that he did not know whether there was much improvement or not?

Mr. COOMBS. The position of the Commission is, as I understand,

that it was a good act, so far as its administrative qualities were concerned, until the Supreme Court deprived them of the power which they thought they had.

Mr. BIRD. May I read again a brief sentence taken from the report for the third year of the Commission, which I read the other day?

Mr. COOMBS. I do not want to interrupt you. I just wanted to lay stress upon that point.

Mr. BIRD. Not at all.

Mr. COOMBS. I thought your declaration was at variance with and contradicted what the Commission had stated—

Mr. BIRD. I do not wish to do that, because I have personally a very high regard for the gentlemen themselves, and I think they have labored earnestly and honestly and faithfully to enforce the law.

Mr. RICHARDSON. But the record will show that that very question was asked of Judge Knapp as to what was the improvement, if any, in the commercial relation of the railroads and the traffic of the public, if any improvement had taken place within the last ten years.

Mr. BIRD. And his reply was—

Mr. RICHARDSON. I understood his reply to be substantially that there was not.

Mr. BIRD. Certainly. I understand that from the general tenor of his testimony; but here is a sentence taken from the report I have mentioned:

The Commission, not being invested with power to enforce its own orders, is dependent for the efficiency of such execution and enforcements upon the courts.

That is on pages 14 and 15 of that report, and this statement is followed by a long list of cases, long even for that early date, which had not been enforced, and in which the railroads had not complied with the orders. This is a matter of record, and the committee has this record at its orders at any time.

Mr. RICHARDSON. I understand from you, if you will allow me to interrupt you, that your opinion is that within the last ten or twelve years, under the existence of the Interstate Commerce Commission, there has been a gradual improvement and a better understanding as to traffic matters between the railroads and the public, and that to-day it is in better condition than it has ever been.

Mr. BIRD. I believe there is a better understanding between the railroads in all parts of the country and the people than ever before, and the existence of the act may have been one of the causes which led to those conditions; but, as a matter of fact, it is notorious that the law itself, the principal purpose of the law, has been defeated, or has failed of accomplishment; and I want to say here, as a digression, if you please, the reason I have studied that question, and I have endeavored to ascertain the reason.

Mr. RICHARDSON. Is not another reason that in addition to the interstate-commerce act, whether it did any good or not, there is an irresistible rivalry which brought about these conditions—

Mr. BIRD. But there was another cause, I wish to impress upon the minds of the committee. Every act essential to the enforcement of the interstate-commerce law is specifically prohibited by law.

Mr. RICHARDSON. Is it not a fact that there is competition to-day in the traffic of railroads?

Mr. BIRD. Yes, sir; and the building up of the great systems of roads simply intensifies that competition.

Mr. RICHARDSON. Does not that tend to bring down the rates?

Mr. BIRD. It tends to bring down the rates.

Mr. RICHARDSON. It does bring them down?

Mr. BIRD. Yes, sir. Is there anything further on that point?

Mr. RICHARDSON. No, I think not.

Mr. BIRD. I wish to be as brief as I can and at the same time to be intelligent in this matter. I want to review briefly the reasons offered to this committee why unusual methods, unusual as a matter of equity to the property interested, should be adopted, why railway property should be placed upon a different ground from any other property, and why it should be deprived of the right granted by the Constitution to all other property.

The first point raised in the earlier hearing before this committee, upon which the most stress was laid, was the existence of an evil which is not denied, the evil—the crime, if you please—of secret preferences; and I have attempted to show that the measure which is proposed does not and can not touch that point. I have suggested, as others before me have in a more able manner, a modification of the law which in my judgment, drawn from a long experience, would go further toward the removing of that evil than any other act, and that is to remove the penalty from the individual, from the railroad official, the agent who acts and who is required, or supposed to be required, to so act, and to put the penalty upon the corporation, so that the corporation itself and all of its employees would immediately be constituted a corps of detectives more efficient than any which I think the Government can command.

Mr. RICHARDSON. Now, you believe that that is a remedy by which this secret practice of rebates which is local to a great extent would be removed?

Mr. BIRD. I believe it would be a most efficient remedy.

Mr. RICHARDSON. This bill does not provide any remedy which will reach the rebate system at all?

Mr. BIRD. It does not; and yet the bill is defended and advocated strenuously by gentlemen because of that very feature.

Mr. RICHARDSON. No witness has been here who has been able to point out any remedy which this bill provides for the evil of rebates.

Mr. BIRD. I understood that the suggestion which I have just made has already been made.

Mr. RICHARDSON. Yes; but this is the Corliss bill—

Mr. CORLISS. The provision for the punishment to be inflicted upon the corporation rather than the individual—

Mr. BIRD. Does it not leave the individual penalty still?

Mr. CORLISS. It leaves, of course, that punishment. The accessory of a crime is not excused.

Mr. BIRD. If I committed that offense would it not, under the bill, subject me to the same punishment?

Mr. CORLISS. In addition to the punishment on the corporation?

Mr. BIRD. Precisely; and it does not remove the main difficulty that the courts and the Commission have had in obtaining evidence to convict the guilty parties.

Mr. CORLISS. I did not intend to ask you any questions till to-morrow, but as we are discussing that point I will ask you right there, Do you contend that it would be wise for Congress to enact

legislation confining the punishment under the act solely to the corporation?

Mr. BIRD. So far as the carrier is concerned, I should say that the corporation should be the only one to be punished.

Mr. CORLISS. True. But would you not also include the shipper who willingly, knowingly, and surreptitiously tries to evade the law?

Mr. BIRD. I think so. I think the beneficiaries are the ones to be punished always.

Mr. CORLISS. That is what I desire to obtain. You eliminate the officers of the corporation and hold the corporation; that is, as well as the shipper or consumer, or the consignee.

Mr. BIRD. Yes; he is benefited by the crime.

Mr. CORLISS. Certainly; that is what I thought.

Mr. SHACKLEFORD. That throws him out as a witness.

Mr. BIRD. You will not need his testimony.

Mr. RICHARDSON (reading):

Every carrier, or the receiver, lessee, trustee, officer, or agent of such carrier, neglecting or refusing to obey such order shall also be subject to a penalty of \$10,000 for each and every day which he or it is in default, said penalty to be recovered for the use of the United States in an appropriate suit brought in the name of the United States in the circuit court.

You do not approve of that, of making the agent responsible for the penalty of \$10,000?

Mr. BIRD. Certainly not.

Mr. RICHARDSON. When a man goes to an agent and wants to get as cheap rates as he possibly can, the agent is not supposed to know all the workings of the road, of the head men on the railroad, and when this man comes to him and asks him for a lower rate, he lets him have it. It would not be just and fair to put a penalty of \$10,000 on that agent?

Mr. BIRD. Or any other penalty, I think.

Mr. RICHARDSON. The penalty ought to be imposed upon the corporation.

Mr. BIRD. Mr. Chairman and gentlemen, I have been connected with the railway service since the close of the civil war continuously, from the position of night watchman or freight handler to my present occupation, and I have yet to know of the first case where an officer, no matter what his rank, or an agent of any company, has knowingly gone contrary to the orders of his corporation; and it seems to me that it is hardly just to punish one whose official existence, whose livelihood is at issue, and who must act in obedience to the orders or the wishes of his employer, when he can not be a beneficiary in any sense of the word. I think it is right that the rule should be that those who are benefited by an offense should be punished, and those only.

Mr. RICHARDSON. There is another paragraph here:

Every carrier, every lessee, trustee, receiver, officer, agent, or representative of a carrier who knowingly violates any provision of this act, or fails to perform any requirement thereof, for which no penalty is otherwise expressly provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one thousand dollars nor more than five thousand dollars for each offense.

Mr. BIRD. Are you reading from the Corliss bill?

Mr. RICHARDSON. Yes, sir; that is the only one we have here.

Mr. BIRD. I have not been able to read and study that carefully so as to familiarize myself with all its provisions. I am only speaking

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I have never supposed that anyone was guilty except for criminally violating the law. It is supposed that a man should know when a rate is published, if it is well and duly published. I myself, in my position, would not undertake to quote a rate one time out of a hundred, and it would take me a long time, even in my own office, to know what a rate is. I do not know. But there are men who are experts, and can tell in a moment; it is their business to do that. And I have never supposed that a man receiving an unlawful rate unknowingly should be deemed guilty or punished.

Mr. RICHARDSON. The point with me is that it strikes me at present, from what I have been reading here, that the remedy to be applied, and the penalty to be applied is against the corporation and no one else. If that can not stop it, if that can not stop the very system you say you do not indorse, the payment of rebates, if that is a private offense, and secret, there is nothing else, it seems to me, which can stop it in the power of the law. You can not take a little agent and

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Mr. BIRD. But if it is legitimate under the circumstances for an individual shipper to shop around and get the best rate that he can from a carrier, the carrier claiming to be a public servant and performing a public service, why is it not legitimate for the carrier itself to shop around and get business on the best terms that it can get it?

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Mr. BIRD. Now, aside from this admittedly great evil—crime, if you please—of secret rates, the principal reason urged for the bill is the fact of these combinations, so-called consolidations, which it is

INTERSTATE COMMERCE COMMISSION,
Thursday, May 1, 1902.

The committee met at 10.30 o'clock a. m., Hon. Loren Fletcher in the chair.

Mr. FLETCHER. Evidently the chairman is detained somewhere for a few moments, and I think we had better proceed. Mr. Bird, will you resume your statement where you left off on Tuesday?

STATEMENT OF MR. A. C. BIRD—Continued.

Mr. BIRD. Mr. Chairman and gentlemen, the greatest stress laid upon the necessity for the measures proposed by the proponents of the bill has centered largely under two heads. I refer especially to the various statements or arguments made by several Interstate Commerce Commissioners.

It was announced with considerable force first, that rates were advancing; that not only had the general volume of business largely increased in the last year or two, but that the rates per ton per mile had advanced. One of the commissioners said that the statistics of his office showed this to be a fact. I am not quite clear as to the precise phraseology. I have not the same means, or in fact any means at the present time, of knowing the aggregate results of the operations of all the roads in the United States. What was said may be true with respect to the group of roads lying east of Chicago, east of the Mississippi River, and north of the Ohio River. What are known usually as the Eastern trunk-line roads are great carriers of tonnage, and I do not know and can not know at this time the precise results of their operations during the last year.

Speaking, however, for the railroad company which I represent, and for the group of roads in the Middle West, of which the St. Paul company is a fair type, I wish to renew the denial I made day before yesterday, and to reassert that the rate per ton per mile is decreasing, and to say that that fairly represents the general conditions in the Middle West. I wish to give to this committee a very brief statement of the facts regarding that particular subject.

For the fiscal year ending June 30, 1900, the St. Paul company hauled 3,357,456,584 mile-tons, and it earned on that traffic \$31,287,566.16, the rate per ton per mile being \$0.00930. The operating expenses of the company for that period was \$26,729,608.04.

Now, the operations of the succeeding year, which is the latest period for which we have the statistics were as follows: Mile-tons, 3,639,977,919, upon which was earned \$31,444,279.12. The operating expense of the company for that year was \$27,251,723.51, an increase of mile-tons of 282,521,335; and the increased tonnage brought an increased revenue of \$156,718.96. But the increase of expense of operations for that year was \$577,884.63. The rate per ton mile on the operations of the larger business was \$0.00069, a little more than 7 per cent decrease.

As I said before, this is a fair representation of the condition of affairs in the Middle West in all those so-called larger systems of road, and it fairly represents, in fact, all the smaller roads in that part of the country.

Mr. WANGER. Will you pardon the suggestion that that possibly does not answer the contention of the Commissioners. As I recollect their testimony, it was that there was no decrease in the rate per ton per mile of tariff charges and that the decrease in the cost of moving freight was brought about by reason of the very much greater increase of volume of cheap freights as compared with those paying high rates, and the illustration given was something like this: Nine tons are moved at \$1 and 1 ton at 20 cents, and that gives you an average tariff of 92 cents. Another year 1 ton is moved at \$1 and 9 tons at 20 cents, and you have an average rate of 28 cents, or a decrease in the cost of freight; the cost is less than one-third in one instance from what it is in the other, and that without any reduction in the rates, the difference being in the character of the freights hauled. Now, I understand your figures go simply to the gross amount of freights carried, and therefore we can not tell whether your tariff rates were reduced or remained the same.

Mr. BIRD. The figures which I present to you are prepared upon precisely the same lines as are the figures which go to the Interstate Commerce Commission. In other words, all they have in their possession is what they have taken from the figures which I have, which have been sent to them. The hypothetical proposition might be true, but it has not been proven. It is a mere hazard. If the supposition is correct, perhaps the deduction is correct, but there is nothing to show that the supposition is correct.

Mr. WANGER. My recollection is that the commissioners referred distinctly to the tariff schedules there.

Mr. BIRD. I will say something later upon that question.

Mr. WANGER. I assumed that you would want to meet the question.

Mr. BIRD. Yes, sir; but I have facts which I want to present. The next subject in my mind is the assertion that competition has disappeared, and that four or five men in New York may sit around a table and control the traffic destinies of this country; that the companies which were referred to are said to have practically merged the rate-making power into the hands of a very few men; that the result which is now apparent, and which there should be fear that it will be more apparent and more effective hereafter, is the disappearance of competition. Now, it was assumed by one of the commissioners, and I think it was Mr. Clements, that the mere maintenance of rates—that is, the effective prevention of secret preferential rates—would result in an increase of the revenues of the railways of the United States of \$20,000,000 a year. The assumption has been all the time that the revenue of the railway companies was reduced largely by secret preferences.

Of course, whatever amount was really paid out in that manner was so much off of the net rate, but the deduction is that the prevention of private rates—departures from the tariff—will in itself result in an enormous increase of the charges which the public must pay; that it will result also in a higher rate per ton per mile and a higher rate of profit to the stockholders.

I have been absent from my business since the 15th of March. I was called from a vacation trip to Washington, so that I have not been on the ground since the 15th of March. Very shortly after that period, or during the latter half of March, the regulation of railroads by injunction was first undertaken, and the roads in the middle West are under injunction, which has been the most effective means that I

have ever heard of—in fact, quite effective—of putting a stop to abuses that have been so bitterly and justly complained of. It is not likely that railway magnates will risk a violation of the orders of the court. The remedy and the punishment is much more swift than it is in any other case, and I have proof that the injunctions are being respected.

Now, I obtained yesterday from the archives of the Interstate Commerce Commission the record of the open published tariff reductions that have been made since the injunctions took effect. It covers a period of about thirty days. The rates, which are now published and sent to the Commission and spread broadcast through the land, are substitutes in large part, if not entirely, for the practices which previously prevailed and which are now enjoined. They not only carry out in effect the reduced rates which were probably made by unlawful means, but being public in the hands of the Commission and of the public are much more widespread in their results than any secret rates could be. They are widespread—I mean as to the effects upon the revenue of the carriers—because being public they apply at all intermediate points. For example, private reductions between Chicago and St. Paul benefited a single shipper, but the rates now public apply to all shippers at Chicago and at St. Paul, as well as to all shippers at intermediate points whose rates had been greater.

Those reduced tariff rates are reported direct by the roads in interest, and I find that in about thirty days, including Sundays, which ought not to be included, there was an average of fifteen and one-half reductions per day. That does not include any of the reductions at intermediate stations which are brought about by publicity and by the operation of the long and short haul provision of the interstate act, so that there are an infinite number of reductions going on all the time from which the public are receiving a benefit and which have a potent influence in the reduction of the rate per ton per mile.

Now, it is a fact demonstrated by long experience that this process proceeds with increasing rapidity, and no matter what supposed combinations of railway ownership have been made, no matter what theory may have been drawn from those combinations, the fact remains that these reductions are going on with increasing velocity. These facts which I submit to you are not surmises, but actual information from the office of the gentlemen who say that competition has ended, from public records.

Mr. Chairman, when the interstate act became a law it was believed that it would prove to be a remedy for the evils of transportation—all the evils complained of. The testimony of the gentlemen who have been in charge of the execution of that law is that it has accomplished nothing which it was intended to accomplish; that it was a failure.

Mr. COOMBS. They claim that it was a success up to the time when the Supreme Court said that they did not have the powers which were originally contemplated under the act. As I understand, that is the position of the Commission. I do not think they claim that it has always been a failure.

Mr. RICHARDSON. Did not Judge Knapp admit, in answer to a question as to what improvement had taken place as to the commercial relations between the railroads and the public during the existence of the interstate-commerce law, that he did not know whether there was much improvement or not?

Mr. COOMBS. The position of the Commission is, as I understand,

that it was a good act, so far as its administrative qualities were concerned, until the Supreme Court deprived them of the power which they thought they had.

Mr. BIRD. May I read again a brief sentence taken from the report for the third year of the Commission, which I read the other day?

Mr. COOMBS. I do not want to interrupt you. I just wanted to lay stress upon that point.

Mr. BIRD. Not at all.

Mr. COOMBS. I thought your declaration was at variance with and contradicted what the Commission had stated—

Mr. BIRD. I do not wish to do that, because I have personally a very high regard for the gentlemen themselves, and I think they have labored earnestly and honestly and faithfully to enforce the law.

Mr. RICHARDSON. But the record will show that that very question was asked of Judge Knapp as to what was the improvement, if any, in the commercial relation of the railroads and the traffic of the public, if any improvement had taken place within the last ten years.

Mr. BIRD. And his reply was—

Mr. RICHARDSON. I understood his reply to be substantially that there was not.

Mr. BIRD. Certainly. I understand that from the general tenor of his testimony; but here is a sentence taken from the report I have mentioned:

The Commission, not being invested with power to enforce its own orders, is dependent for the efficiency of such execution and enforcements upon the courts.

That is on pages 14 and 15 of that report, and this statement is followed by a long list of cases, long even for that early date, which had not been enforced, and in which the railroads had not complied with the orders. This is a matter of record, and the committee has this record at its orders at any time.

Mr. RICHARDSON. I understand from you, if you will allow me to interrupt you, that your opinion is that within the last ten or twelve years, under the existence of the Interstate Commerce Commission, there has been a gradual improvement and a better understanding as to traffic matters between the railroads and the public, and that to-day it is in better condition than it has ever been.

Mr. BIRD. I believe there is a better understanding between the railroads in all parts of the country and the people than ever before, and the existence of the act may have been one of the causes which led to those conditions; but, as a matter of fact, it is notorious that the law itself, the principal purpose of the law, has been defeated, or has failed of accomplishment; and I want to say here, as a digression, if you please, the reason I have studied that question, and I have endeavored to ascertain the reason.

Mr. RICHARDSON. Is not another reason that in addition to the interstate-commerce act, whether it did any good or not, there is an irresistible rivalry which brought about these conditions—

Mr. BIRD. But there was another cause, I wish to impress upon the minds of the committee. Every act essential to the enforcement of the interstate-commerce law is specifically prohibited by law.

Mr. RICHARDSON. Is it not a fact that there is competition to-day in the traffic of railroads?

Mr. BIRD. Yes, sir; and the building up of the great systems of roads simply intensifies that competition.

Mr. RICHARDSON. Does not that tend to bring down the rates?

Mr. BIRD. It tends to bring down the rates.

Mr. RICHARDSON. It does bring them down?

Mr. BIRD. Yes, sir. Is there anything further on that point?

Mr. RICHARDSON. No, I think not.

Mr. BIRD. I wish to be as brief as I can and at the same time to be intelligent in this matter. I want to review briefly the reasons offered to this committee why unusual methods, unusual as a matter of equity to the property interested, should be adopted, why railway property should be placed upon a different ground from any other property, and why it should be deprived of the right granted by the Constitution to all other property.

The first point raised in the earlier hearing before this committee, upon which the most stress was laid, was the existence of an evil which is not denied, the evil—the crime, if you please—of secret preferences; and I have attempted to show that the measure which is proposed does not and can not touch that point. I have suggested, as others before me have in a more able manner, a modification of the law which in my judgment, drawn from a long experience, would go further toward the removing of that evil than any other act, and that is to remove the penalty from the individual, from the railroad official, the agent who acts and who is required, or supposed to be required, to so act, and to put the penalty upon the corporation, so that the corporation itself and all of its employees would immediately be constituted a corps of detectives more efficient than any which I think the Government can command.

Mr. RICHARDSON. Now, you believe that that is a remedy by which this secret practice of rebates which is local to a great extent would be removed?

Mr. BIRD. I believe it would be a most efficient remedy.

Mr. RICHARDSON. This bill does not provide any remedy which will reach the rebate system at all?

Mr. BIRD. It does not; and yet the bill is defended and advocated strenuously by gentlemen because of that very feature.

Mr. RICHARDSON. No witness has been here who has been able to point out any remedy which this bill provides for the evil of rebates.

Mr. BIRD. I understood that the suggestion which I have just made has already been made.

Mr. RICHARDSON. Yes; but this is the Corliss bill——

Mr. CORLISS. The provision for the punishment to be inflicted upon the corporation rather than the individual——

Mr. BIRD. Does it not leave the individual penalty still?

Mr. CORLISS. It leaves, of course, that punishment. The accessory of a crime is not excused.

Mr. BIRD. If I committed that offense would it not, under the bill, subject me to the same punishment?

Mr. CORLISS. In addition to the punishment on the corporation?

Mr. BIRD. Precisely; and it does not remove the main difficulty that the courts and the Commission have had in obtaining evidence to convict the guilty parties.

Mr. CORLISS. I did not intend to ask you any questions till to-morrow, but as we are discussing that point I will ask you right there, Do you contend that it would be wise for Congress to enact

legislation confining the punishment under the act solely to the corporation?

Mr. BIRD. So far as the carrier is concerned, I should say that the corporation should be the only one to be punished.

Mr. CORLISS. True. But would you not also include the shipper who willingly, knowingly, and surreptitiously tries to evade the law?

Mr. BIRD. I think so. I think the beneficiaries are the ones to be punished always.

Mr. CORLISS. That is what I desire to obtain. You eliminate the officers of the corporation and hold the corporation; that is, as well as the shipper or consumer, or the consignee.

Mr. BIRD. Yes; he is benefited by the crime.

Mr. CORLISS. Certainly; that is what I thought.

Mr. SHACKLEFORD. That throws him out as a witness.

Mr. BIRD. You will not need his testimony.

Mr. RICHARDSON (reading):

Every carrier, or the receiver, lessee, trustee, officer, or agent of such carrier, neglecting or refusing to obey such order shall also be subject to a penalty of \$10,000 for each and every day which he or it is in default, said penalty to be recovered for the use of the United States in an appropriate suit brought in the name of the United States in the circuit court.

You do not approve of that, of making the agent responsible for the penalty of \$10,000?

Mr. BIRD. Certainly not.

Mr. RICHARDSON. When a man goes to an agent and wants to get as cheap rates as he possibly can, the agent is not supposed to know all the workings of the road, of the head men on the railroad, and when this man comes to him and asks him for a lower rate, he lets him have it. It would not be just and fair to put a penalty of \$10,000 on that agent?

Mr. BIRD. Or any other penalty, I think.

Mr. RICHARDSON. The penalty ought to be imposed upon the corporation.

Mr. BIRD. Mr. Chairman and gentlemen, I have been connected with the railway service since the close of the civil war continuously, from the position of night watchman or freight handler to my present occupation, and I have yet to know of the first case where an officer, no matter what his rank, or an agent of any company, has knowingly gone contrary to the orders of his corporation; and it seems to me that it is hardly just to punish one whose official existence, whose livelihood is at issue, and who must act in obedience to the orders or the wishes of his employer, when he can not be a beneficiary in any sense of the word. I think it is right that the rule should be that those who are benefited by an offense should be punished, and those only.

Mr. RICHARDSON. There is another paragraph here:

Every carrier, every lessee, trustee, receiver, officer, agent, or representative of a carrier who knowingly violates any provision of this act, or fails to perform any requirement thereof, for which no penalty is otherwise expressly provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one thousand dollars nor more than five thousand dollars for each offense.

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Mr. BIRD. Now, aside from this admittedly great evil—crime, if you please—of secret rates, the principal reason urged for the bill is the fact of these combinations, so-called consolidations, which it is

alleged will ultimately result in the disappearance of competition. I am rather surprised, that fact being proved, at having the proponents of the measure press that point so strenuously, when I look at the measures which are proposed. Aside from the secret preferences, it is a well-known fact, and admitted, I think, and urged here before you, that the great burden of complaint under the interstate act arises from unjust or excessive differentials; that is to say, that rates are relatively unjust—rates that may in and of themselves be just and fair become unjust and unfair when compared with other rates. The contentions with which we have been confronted during the past fifteen or sixteen years, or during the whole history of this law, have been between communities.

If you please I want to refer again to the Milwaukee Chamber of Commerce wheat-rate case as illustrating the inconsistency of the views which have been advanced in favor of placing unusual power in the hands of the Commission as to the making of rates. Please bear in mind that the relative differences constitute the base of a very large proportion, I should say more than three-fourths, of the complaints which have come before the Commission officially. Now, we will say that the rate on wheat from Pipestone, Minn., to Minneapolis, which was complained of, was 10 cents per 100 pounds, and that the rate to Milwaukee from the same place was $17\frac{1}{2}$ cents; that made a differential of $7\frac{1}{2}$ cents in favor of Minneapolis. The Milwaukee Chamber of Commerce contended that the $7\frac{1}{2}$ cents differential was excessive; that it resulted in diverting an undue proportion of the traffic to Minneapolis. Minneapolis responded (and it had the same right that Milwaukee had), and said that the differential was fair; that it was the unusual energy and the great combination of milling facilities and its location which gave it an advantage, and they said, "We are entitled to the benefit of our location."

This bill provides that in all controversies where the differential is at issue, where the rivalry is between two communities, that the Commissioners shall have power over the minimum rate, and can prohibit and prevent reductions. If that was not provided, please understand that the Commission could not regulate or enforce the differential according to its judgment, and there is no power, no body, judicial or otherwise, that can regulate a differential unless it shall have absolute power over the minimum rate, because it might say, "The Milwaukee differential of $7\frac{1}{2}$ cents is $2\frac{1}{2}$ cents in excess of what it ought to be." Now, how should that be adjusted? It is patent that it could not be brought about by the advance of $2\frac{1}{2}$ cents to Minneapolis. There is no tribunal that would dare say, "Advance your rates to Minneapolis." It would be contrary to public policy admittedly. Therefore the rate to Milwaukee must be reduced $2\frac{1}{2}$ cents, so as to leave the differential to Milwaukee only 5 cents.

Now, here are a number of railroads concerned solely between the wheat belt and Minneapolis, and they say justly:

There is one thing which is worse than low rates, and that is no business, and while 10 cents per 100 pounds is a reasonable rate per se and as such stands unchallenged, and as such does not yield an undue tribute to the carrier, circumstances arise and may arise in which a $7\frac{1}{2}$ -cent rate will be reasonable, and that carrier says, "If I do not reduce this 10-cent rate I lose the business," and it reduces it $2\frac{1}{2}$ cents.

The whole wheat belt of the Northwest in such an event would be the beneficiary. The people who would suffer by that movement

would be a few people, comparatively, in Milwaukee. Is it for the common good; is it good public policy to deprive the country of that strongest element of competition? Please bear in mind that the strong reason urged in favor of the giving to the Commission of this unusual power is that competition must continue, and there is no other way to continue it; and the very measures they propose are measures that will throttle it more than anything that has ever occurred or is likely to occur. It is not a strange case, or an imaginary thing. I have seen it worked out year after year, and I know that I speak within reasonable limits. We cite to you another practical instance. The rates from Chicago and Milwaukee to the Northwest are upon the same basis, say, to St. Paul. There is a difference of 85 miles in the haul, but the location of the various lines of transportation by rail, and partly by rail and partly by water, make it necessary that the rates from Chicago and Milwaukee to St. Paul and Omaha, and all the river points and the Pacific coast, should be the same. Those are just reasons and never have been brought into question.

The CHAIRMAN. Will you state some of those reasons? Some of the committee perhaps do not realize them.

Mr. BIRD. Rates from New York, Atlantic Seaboard, and Eastern Trunk Line territory to Milwaukee via all rail routes and rail-and-lake routes are the same as to Chicago. The all-rail rates from New York via Chicago to Milwaukee are the same as to Chicago, because lines east of the east shore of Lake Michigan run their cars through to the east shore, all rail, and thence via car ferryboats, without breaking the bulk, to Milwaukee, the distance via such routes being no greater than to Chicago, so that rates to the two cities are the same, and this is true as to rail-and-lake business in connection with car ferries to Manitowoc, Wis., and it is substantially true as to the same class of transportation to Marinette, Wis., and Menominee, Mich. Further, it is true as to break-bulk business, lake and rail, to Green Bay. This being the case, it is necessary, in order to preserve equality of through rates via the various routes, to apply the same rates from Milwaukee to St. Paul and to Missouri River points as are made from Chicago to the same points, even though the haul from Milwaukee westwardly is in some cases greater and in some cases less than the haul from Chicago.

It is the only possible way to equalize through rates and prevent discrimination.

Now, St. Louis is a strong rival of Chicago and Milwaukee. It is nearly twice as far by rail from Minneapolis or St. Paul to St. Louis as from Milwaukee. A controversy commenced as far back as the late seventies as to what rates should be made from St. Louis on the one end and Chicago and Milwaukee on the other. A railroad-rate war ensued that cost many thousands of dollars, and still the question was not settled, and it was finally compromised, and a differential of 5 per cent was agreed upon ten or twelve years ago, I think. On low-grade freight a difference of less than 1 cent per 100 pounds was the result, and that is very aggravating to the people interested in shipment from Milwaukee to St. Paul.

Now, who shall say that a board shall be clothed with power to say that the rate from St. Louis to St. Paul shall not be less than so much? The pending measures are intended to make it possible to institute a definite rate which must stand for two years no matter what happens, and no measures ever proposed could more effectively prevent com-

petition. I could occupy your time indefinitely citing you practical cases of this kind. What the railway company may want in defense of its own property and what may be reasonable to-day, and what it may need and find justification for to-morrow, is quite a different thing. We are subject to all the changes of condition and circumstances that all other people are. But the fact remains that the remedy which is proposed as a guard against the disappearance of competition is the remedy that does not permit competition.

There are two or three items that have been elaborated upon before this committee which I wish to touch upon. The cases which have been referred to have also been very strenuously urged as reasons for the adoption of a measure which we consider unique and unusual.

There has been great controversy and contention and bitterness in some cases because of the difference between the rate on wheat and the rate on flour. Of course the subject is introduced always and pushed by the miller or his representative. Before explaining or attempting to explain why these differences exist, and may possibly exist hereafter, I wish to announce plainly my own view on the subject as to expediency and good policy, the same as I have heretofore announced it under oath in examinations by the Interstate Commerce Commission. I believe, and have always believed, in the general policy of promotion of the industries of the United States. The same line of reasoning leads me to prefer that the rates on wheat and flour shall be such as to encourage the manufacturing of the wheat into flour by the citizens of this country. It makes other business; it enlarges our traffic; it builds up communities; it does all of those things which a railway corporation wants done upon its own lines, and what may be true in regard to this subject as to the farm supplies is very likely true as to every road in the land. It is to the advantage of the St. Paul Company that Minneapolis, the greatest milling center in the United States, should prosper.

We carry from 50 to 100 carloads of flour out of that city every day in the year, almost, certainly during the busy season even more than that, and we carry the raw materials of the business, and all the supplies that go into the business; and more than that, we carry the people and the supplies for the people who are engaged in the business, which is a greater item of traffic. And so I want to make my opinion and judgment in the case well known, because there are valid reasons why the rate on wheat may be lower than on flour, and I want to say that they are influences which the railway companies can not resist. Possibly they may for a time, possibly in an emergency, but not wholly, nor for all time. In the first place, the character of railroad equipment has changed rapidly within the last five years. The changes have been made in the West, apparently, much later than they have among the trunk lines of the East.

The capacity of the freight cars has been quadrupled, to state it moderately. There are many cars—all the new cars—that carry 80,000 or 100,000 pounds. When I commenced my career as a railway employee, 18,000 pounds was the maximum carload between the Middle West and New York. The tracks, the grades, the rails, everything pertaining to the movement of freight has also improved in quality, so that a much heavier load can be put into a car to-day than formerly. With some exceptions, to which I will refer, it is not customary, it is not convenient, and many times it is not possible, to load a car as

heavily with flour as with wheat. The cars are made to earn much more money with wheat than with flour.

Mr. FLETCHER. Does that apply to the export flour?

Mr. BIRD. I want to make that exception in a moment, Mr. Fletcher.

Mr. FLETCHER. Very well.

Mr. BIRD. The great exception to this rule is in the great milling centers where there is a considerable proportion, perhaps 40 per cent, I am not sure now, of the freight which is export. It is loaded in double bags, and by proper care and attention on the part of the shippers the cars are loaded very nearly to their capacity. In fact, in the large centers an arrangement could be made with the millers, I think, where they should load to a certain stated capacity or pay for it any way provided the rate on wheat were made no lower. That is one side of the question. That is the practical side; not sufficient, possibly, in all respects to justify what has been done.

Now, take Minneapolis as an illustrative point, and it is a very fair illustration, because it is a very large wheat market, and it is one of the largest if not the largest milling point in the country. It is 150 miles from Minneapolis to Duluth. The entire line is within the State of Minnesota. The rates that are made in that State are made without reference to the interstate act, and the lines which extend between those points do what they please provided they do not transgress the State law.

Duluth is equipped bountifully with elevators and every facility for handling grain from the cars to the elevators and from the elevators into the vessels. I have known year after year, at certain seasons, rate of 2 cents per hundredweight Minneapolis to Duluth. Now, a very moderate rail rate from Minneapolis to Chicago is 10 cents; nominally 12½ cents—locally, I mean. When the grain gets to Duluth it goes by water to Buffalo. The carrier may do what he pleases there; it is nobody's business except that of the shipper and the carrier, and nobody can regulate that class of transportation, and it can go into an elevator and go by rail from Buffalo to New York, wholly in the State of New York, and who shall say what that rate shall be there? Or it may go by canal from Buffalo to New York, and then who shall say what the rate shall be? This is not a trumped-up case, as the gentleman from Minnesota knows. This happens every year. He has known it to his sorrow many times.

Now, transportation on Lake Superior and on the great chain of lakes has increased in facility, in its advantages, in its power to move freight cheaply, in a greater ratio of improvement than has been made in the methods of transportation by rail. Why? Because the Government has expended its millions in the improvement of the waterways, in the enlargement of canals and building of locks and dams, and in every conceivable way, which all redound to the benefit of lake transportation, and tend to reduce the cost of lake transportation for the benefit of the people at large and of the producer and the consumer. And we have every year, every season, a large amount of wheat which is moved in that way. You can move wheat from Minneapolis to Buffalo cheaper than a fair rate from Minneapolis to Chicago.

Now, it is proper at certain seasons for the railroads to carry freight at comparatively low rates, and the decisions we have had upon that point convince us that it is expedient for us to make an unusually low rate, provided the rate is sufficient to meet the cost of that particular

traffic, and leave even a fraction of profit for the maintenance of the property. I believe that is a proper policy. It has been justified by the Commission, by Judge Cooley, and the courts repeatedly.

Now, who shall say what we ought to do, not as a matter of policy, if you please, but applied to Minneapolis in this case, who may be injured. What shall be done? There may be 200 or 500 cars that go east to be loaded west-bound. Empty cars must go to Chicago and Milwaukee in that season simply because the wheat comes to Minneapolis.

Mr. FLETCHER. Let me ask you whether it is not a fact that the great milling industry of Minneapolis has probably advanced to the producer of wheat an advantage of 2 to 5 cents a bushel for the last fifteen years?

Mr. BIRD. I have been connected with the St. Paul road for twenty years, and I find this fact, that the St. Paul lines extended into the wheat belt have been successful, and have been built up because the prices paid by the Minneapolis millers for wheat have been higher than could be got, relatively, in other markets.

Mr. FLETCHER. I know that for the last five years that I was in the milling business, up to a few years ago, the average price of wheat in Minneapolis was above the regular market 5 to 7 cents. That is because we receive a better profit on our milling industries than we are receiving now.

Mr. BIRD. Yes, sir.

Mr. FLETCHER. Now, is it not worth while to the producer of wheat to throw protection around such facilities as make for the building up and fostering of an industry like that, which is beneficial to the producer?

Mr. BIRD. It needs no argument to me in support of that measure. I am only trying to show you what gives rise to the conditions complained of in this respect. I am unvarying in my support of the position that you advance. I only want to show to this committee, and to you, perhaps, some of the facts which must have come to your attention, some of the difficulties that are in the way and that cause those differences, which exist and hurt the people, and that there should not be a law passed here which is unjust to the carrier and which in itself can not meet the matter complained of. The Government provides waterways, it encourages all these things which are supposed to tend to the benefit of the people, and so, as I said, there are times when some railroad is justified in carrying wheat at a low price.

Take the line from Minneapolis to Lake Superior. At certain seasons of the year there are large quantities of coal coming down from the lakes. The cars would go back empty but for a concession in the wheat rate, but we can not regulate that; it is local State business. The Interstate Commerce Commission can not touch it. There can be no action brought under the interstate-commerce law, because it is a purely Minnesota question.

Mr. FLETCHER. Before you leave that point, I want to ask you are not all of the conditions that have surrounded the milling industry of Minneapolis (that I speak of especially because that is the largest milling center of the world, handling 78,000,000 bushels of wheat in the last year) and all the conditions that surround this manufacture of flour, including this discrimination that was made of 2 cents a hundred

between export flour and domestic flour—I do not speak of it locally, but of the export flour and the export grain—a discrimination which it is hard for us to contend with and keeps up the price of wheat to a higher level than it would be if that milling industry was wiped out? Are not these things, this discrimination in the flour rate and also this other matter which has been before this committee of the rate on shipments to London and the dock charges there, affecting the milling industries of the Northwest and, in fact, every industry in the United States?

Mr. BIRD. I thoroughly believe that the wiping out of the milling industry of Minneapolis would have a disastrous effect upon the James River Valley and a disastrous effect upon the railroads that run the wheat into Minneapolis. That is true, and whenever any disaster has befallen the milling industry we have felt it keenly. But these low channels of transportation exist, by encouragement from the Government largely, and the rate is given and the wheat moves. What injury is inflicted on the milling industry by the railways if they make a rate to move some of the wheat and do not make a rate lower than is already in existence? I think that feature of the case was taken into consideration by the Commission at the time. I am not justified in calling in question the decision of the Commission in that respect, but it is true, I think, that it is to the interests of the railroads at Minneapolis to have the wheat milled at Minneapolis, and any rule or regulation or order of the Commission or any other order which creates the contrary effect, is a direct injury to the railway interests.

Mr. FLETCHER. Would not this apply with like force to the grain raiser?

Mr. BIRD. If the industry is removed from Minneapolis, the grain raiser of the Northwest will suffer. But that which threatens the milling interests exists without any reference to the railway companies.

That is a point I want to make, and I want to make it in reference to repeated urgent arguments of the gentlemen from Milwaukee—the various gentlemen who dwelt upon that evil, that it is not the act of the carrier. They are not responsible for the condition, the proposed remedy for which is this unusual measure.

Only a few words more, if you please. There are many difficulties and complications that go to make up the railway problem. Railway transportation has been admittedly a matter of evolution for many years past.

There have been many improvements, and in spite of the flagrant abuses that have attached to the system, it is true, and beyond peradventure or doubt, that conditions between the railway people and their constituents, the shippers, have been greatly improved. The passage of the interstate-commerce act originally, and the amendments which soon followed, was experimental. Legislation, as has been stated here by members of this committee, should be a matter of evolution, and not a matter of revolution. It seems to me to be exceedingly unwise and impolitic to undertake at one swoop here to regulate the whole business. It is an enormous business, and is full of ramifications.

One of the greatest aids to advancement is railway energy, railway efforts to develop the country, and there are thousands and thousands of instances where new industries are being constructed, machine shops, elevators, mills, where it is a universal rule to make concessions in the rates—not secretly, but everybody knows it—and never to charge more

than 50 per cent on machinery and other material for the establishment of manufacturing institutions, as the result of which policy one can see a great change in passing over the various roads.

Now, such a proceeding is unlawful under this act. It may be that by inference it would be deemed unlawful under the existing act; but under the proposed law it is absolutely a crime to accept a rate that has not been made public, and these rates are necessarily made from day to day, according to circumstances. There is no iron-clad rule, but people understand that the road is ready to assist in developing the resources of the country everywhere; but they are not published rates, and it is almost impossible, it is not within the bounds of possibility, to construct a tariff that will meet the requirements. Shall that be stopped? The Commission is to be clothed with power to make rates, to ask that the railroad companies make the rates first, that they shall make the initial movement in that, but that ultimately in every case of complaint the Commission shall make the rate.

I have had quite extended experience in dealing with these complaints. The Commission must be consistent. If it makes a decision to-day, it must make one to-morrow that is in harmony with it, and there must be a logical sequence from each decision to the next. The theory which must pervade all such transactions is that each locality must have the benefit of its location; that there must not be taken away from one town the benefit of its nearness to the consumption point. The law says that rates must be relatively just; that there shall not be discrimination between communities.

The only proceeding that could be taken in efforts to comply with this provision of the law, which is an essential one is to adopt a rule which will leave carriers invulnerable against complaints.

They must be consistent, and there is but one way to do it; that is to take the lowest graded distance tariff in the district and measure off the rate according to the distance and say that is to be the rate. If all the railroads belonged to one corporation and there was one traffic manager, there is but one thing he could do, viz: Take the short line between any two points and apply it. In such a case no man could sustain a complaint of discrimination.

If I had the time, or you had the time to listen to the details of this, I could demonstrate to you that that method of making rates——

The CHAIRMAN. Will you not do that? We have time.

Mr. BIRD. I have the time to comply with your wishes.

The CHAIRMAN. We would be glad to hear you upon that point.

Mr. BIRD. It bears closely upon the matter in question. On every line there must be a distance tariff. In the absence of a special or a terminal tariff the distance tariff is the only basis of rates. It stands to reason that that tariff must be constructed on this principle, that the rate per ton per mile must decrease as the distance increases. If it were not so, no matter how low that tariff would be, it would be absolutely prohibitive beyond 50 or 60 miles. As a necessity the rate for a haul of 100 miles must not be as great as for two hauls for 50 miles each. The most aggressive granger legislature would not dispute that point. If it makes a 10-mile tariff, then the tariff for five times that distance should be not five times that tariff, but less, so that the drift is always in favor of the long haul, which is the lowest rate per ton per mile, and it gradually extends until its influence is invulnerable and irresistible.

I remember when the interstate act was passed by Congress everybody thought that the day of jubilee had come, and we could go and adjust our rates in conformity with our then views as to our localities. The people of Chicago, who had claimed discriminations against them in favor of Western competing cities, felt that it was all right, and that they would regain the supremacy which had long since been wrested from them by the jobbers located nearer the Western consumers. The jobbers of the Mississippi Valley expressed the same opinion as against their competitors on the Missouri River and felt the same way, and the first man to suffer was the jobber at Dubuque and Davenport, and all along the Mississippi River. You may remember those times yourself, Mr. Chairman.

But it soon became evident that the rate, say from Chicago to points west of Dubuque, was less than the rate from Chicago to Dubuque, and the rate thence to the farther Western destination. The combination of the two rates barred the Dubuque man, measurably, from competition with the Chicago jobber, who reached over and beyond him. He had the long haul and the lower rate. Chicago thought that was great success; but pretty soon it appeared that Buffalo and Pittsburg and New York and Philadelphia were having the same advantages over them, and then the trouble commenced, and it has continued ever since. The railroads have made every effort to protect and promote the interests of the great cities which they enter, and confusion has ensued.

Now, if the Commission is going to be vested with the right to make rates, it must proceed logically. Its rates must be above complaint; they must be in conformity with the spirit of the law itself. And ultimately—I am not an alarmist; all these things come by evolution—but ultimately these results will follow. These great trade centers are all over the United States. The country is dotted with them. They have grown up and have been made what they are by the rate systems which have grown up around them and made them possible. All this is not in the nature of a revolution. If anybody is to be empowered to make rates, that individual or body must comply with the spirit of the law, and in the end they must ultimately overturn all these great distributing points. That is not farfetched, it is practical, and I have seen it worked out in the last fourteen or fifteen years.

Now, it seems to me, in view of these facts, that this committee, before it proposes to amend the act or to further regulate commerce, should consider that a great evil is clearly defined, that it is admitted on every hand, and threatens the life of our commercial system. If means can be adopted to remove that evil, they should take that step.

I am not altogether sure of the accuracy of my memory in one matter to which I wish to call your attention. The United States is a tremendous country in area, in the diversity of its interests, and the volume of its traffic. It has undertaken to regulate interstate commerce by one act and, I believe, two amendments.

Mr. FAULKNER. One amendment.

Mr. BIRD (continuing). If I am not much mistaken, the English Parliament has upon its statute books over 1,000 acts in reference to commerce. That goes to show the continued experiments that they have made. It does not seem reasonable or just to the enormous interests of the people and the railways to assume by any one measure like this to remedy all the evils that are complained of. Each well-defined evil

should be removed, but there should be no experiments. I do not think that I have anything further to say, unless the members of the committee wish to ask me questions.

Mr. COOMBS. In reference to England, are the railroads operated by more than one company; more than one system?

Mr. BIRD. Yes, sir. I understand that there is a great deal of actual competition in England. I do not think they are subjected to the severe competition that we are subjected to, because, if I am correctly advised, a railroad company is not permitted to build there until Parliament has said that the railroad is a public necessity.

I am glad that you asked me that question, because it reminds me of one other remark I wish to make. The assumed loss of competition is the one great bugbear which seems to have been presented to you as the reason why the proposed measures should be adopted. It has been said that competition is disappearing. I dispute that, respectfully but firmly, but that is the allegation. If what has been said in this connection is true, the only hope for this country is the increased number of rival carriers; and I do not think, Mr. Chairman and gentlemen, that the adoption of proposed measures will in any way encourage the building of new railroads. I am quite sure that if you surround the business with too many restrictions, making the livelihood of these roads impossible, that there would not be much more money risked in enterprises of that kind.

Mr. CORLISS. You are going to attend before the committee to-morrow?

Mr. BIRD. I understand the committee wish me to do so. I will be here to-morrow.

Mr. CORLISS. I will be glad if you would take up what is known as the Corliss bill and indicate the objections to the particular features thereof which you may have—some of them I notice that you approve of. I will be very glad if you will do that?

Mr. BIRD. I will do so with pleasure.

Mr. CORLISS. I will ask you to-morrow to point out the objectionable features of the bill.

Mr. BIRD. I will do so.

The CHAIRMAN. If it pleases you, to-morrow there are two or three matters which I would like to have you discuss, and one is I would like to have you inform the committee, if you will, what are the elements of cost that are considered by you when you fix a schedule of rates.

Mr. BIRD. I would like to answer that right now.

The CHAIRMAN. Our time has expired to-day.

Mr. BIRD. Very well; then I will do so to-morrow.

The CHAIRMAN. I would like to ask you if there is a difference in the cost of transportation produced by climatic changes; for instance, does it cost more in a northern climate to handle freights in the winter season than in the summer—in the warm weather?

As I understand the Commission, they think they should have the power to fix the rates for the entire country, and they have stated that under a given condition, if this act should pass, it would be necessary, or might be necessary, for them to fix all of the rates upon an entire system of railway. Now, is there any middle course that might be adopted there?

Then I would like you to give your views as to what the remedy should be where there is an excessive charge persisted in by a carrier.

Those are some of the matters I thought I would like to hear discussed.

Mr. BIRD. I will hold myself entirely at the pleasure of the committee, but I should like very much to leave on the Chicago limited on Saturday morning.

Mr. BLYTHE. If I might suggest to the committee, perhaps the subject of remedies Mr. Bird is not so well prepared to reflect the consensus of opinion of the railroad companies upon as some of the rest of us who have looked at it more from a theoretical than practical point of view. I simply suggest that because I do not know what Mr. Bird's view is. He may not feel ready to discuss those matters.

Mr. BIRD. I am obliged to Mr. Blythe for mentioning that, because I only desire to present the practical side of the matter, and when it comes to legislation and law and forms and legal rights and wrongs I think that the counsel should take up the burden.

Mr. CORLISS. Sometimes a business head gives us better light than a lawyer's.

Mr. BIRD. I am very much obliged, Mr. Chairman, for the kind consideration which this committee has given to me.

The CHAIRMAN. We certainly feel very much obliged to you for your aid.

(Thereupon the committee went into executive session, at the conclusion of which it adjourned until to-morrow, Friday, May 2, 1902, at 10.30 o'clock a. m.)

INTERSTATE COMMERCE COMMISSION,
Friday, May 2, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. A. C. BIRD—Continued.

The CHAIRMAN. If you are ready to proceed, Mr. Bird, the committee is in session.

Mr. BIRD. Mr. Chairman, just before the adjournment yesterday several questions were suggested, to which I was requested to prepare myself for answers this morning.

Mr. Corliss asked if I would read the Corliss bill and indicate the objections to any particular features of that bill which I might have. I find that I have frequently read the Corliss bill, and in this connection I wish to repeat what I have already said, that I am not a lawyer and that I can not wisely undertake to discuss these questions from a legal standpoint. All that I hoped to do was to present to this committee practical views taken from experience.

My principal objection to the provisions of the bill is as to the power which it is proposed to confer upon the Commission in the matter of making rates, and the conditions under which the orders of the Commission in that respect are to be enforced. I am in sympathy with that portion of the bill which seeks to strike at the admitted abuses that attach to railway traffic, and am prepared to lend my

aid in that direction. The abuse which I refer to is secret preferential rates.

Mr. CORLISS. You call them preferential rates; we know them as rebates.

Mr. BIRD. If a rebate has an injurious effect it has it because it is a secret preference. Our phraseology is "secret preferential rates," and such rates are obtained only by the payment of rebates. I do not know that I can say anything further, Mr. Corliss, on that point, unless you have some other question.

Mr. CORLISS. I would like to ask you if you have any general knowledge as to the judgment of the traffic men as to the wisdom of a measure which will transfer the punishment now inflicted under the law to the corporation itself, as proposed by this measure?

Mr. BIRD. I have been in frequent conference with my associates and competitors, and this subject has been so prominent that I speak with confidence when I say that the traffic men of the country, especially of the district in which I am engaged, are unanimous in their belief that the most effective measure for the prevention of secret preferential rates is to remove the penalty entirely from the official and the agent of the railway company, who can never be benefited by such practices, and let it attach directly to the corporation, so that the corporation at once becomes the strongest power for the enforcement of the act, for the prevention of the offense. It is the universal opinion of traffic men that no traffic official will knowingly violate the spirit of the instructions of his company. If it is made an object to the corporation to prevent these offenses, their instructions will be so plain that every official in the land will be arrayed against the offense.

To elaborate on that point from practical experience, you may take a group of roads, 10 or 15 roads, in frequent conference through their traffic officers to devise as far as they can, means of enforcing the rates, as far as they are permitted lawfully to do it, to enforce the tariff rates and prevent discriminations. * Of that group perhaps one road—maybe more, but a minority—is so situated that it finds that it can not get business at even rates, and it indulges in these secret practices which divert the business from the other roads. Instantly all the officials of these other roads will be banded together to find means to put into the hands of the proper officers of the law information which will lead to detection and punishment. I submit that that class of men, the officials, are the very men who can most readily find a way to get the evidence that is necessary to conviction.

Mr. CORLISS. Now, is not this complaint with reference to differentials and rates the greatest possible element of discord and condemnation and irritation before the public to-day with reference to railroad traffic?

Mr. BIRD. I think, as I said in my first remarks to the committee, that there is no greater offense, none more widespread, and none more properly subject to condemnation than that one offense; that it is the chief cause of the greatest care, anxiety, and perplexity of railroad management.

The CHAIRMAN. Mr. Bird, here is a situation that is reprobated by everybody who has appeared before us. It is said to be reprobated by the railroad officials. The punishment for this offense is now on the man who commits the offense, the active agent in producing the condition. Here is a proposition to now transfer the punishment from

him to another body. That seems—that would seem—to the man who had not studied the question to be very singular. Here is a means of stopping it through the punishment of the man who is the actor.

Now, will you make some explanation to this committee—because you are now talking to the House of Representatives, and these statements will be discussed, and any proposition that we offer goes before the House—will you make some explanation as to why it should be necessary to change this responsibility or liability to punishment from the man upon whom it may now be inflicted, who is the servant and the agent of the party who under the proposed change would receive the punishment? I know that that is a subject, that is a proposition, that would strike the average mind later on as very singular.

If we should advocate that change recommended by the committee, we would like to be reenforced by the opinions of practical men as to why this should be, as to the necessity for it; why does not the master, who is to have this punishment inflicted upon him if the proposed change is made, why does not he do it now?

Mr. CORLISS. That was pretty well illustrated by the remarks of the commissioners as well as your preliminary statement, but we would like to hear from you fully on that.

Mr. BIRD. There are two reasons that present themselves to my mind in support of this suggestion. First, it appears to me that the purpose of the law is not revenge, but the prevention of crime; and if it can be shown that the method proposed is more likely to prevent crime, it is the part of wisdom to adopt that method.

The second is more of a personal matter. It does not seem right to punish the man who has no personal motive whatever for the offense and who would under no other circumstances, of his own free will, violate the law. I do not know a traffic man in all my acquaintance who does not infinitely prefer to obey the law. They have just as much pride in being self-respecting and law-abiding citizens as any other class of men, and in all other respects except this offense I believe them to be, as a class, honorable gentlemen, respected in their communities; and their pride is hurt, is lowered, when it comes to be apparent that their position is such that it practically forces them into this position. I do not know that I can add anything unless you see that I have omitted something.

I will add this: The purpose of the law is to prevent this crime. I go about my business in an ordinary way, and I find, after giving patient and constant attention to it, that in the course of a few months that traffic is drifting away from me in large bodies. The corporation that I represent naturally takes the ground that something is wrong and it should be righted. We find, in the course of our investigations, that some representative of some railroad, ignoring the law and its requirements in this respect, in order to secure large benefits, has beyond any possibility of doubt made some secret preferential contract with the parties who have taken their business away from us, who had given it to us. The business is gone, and a desperate condition of that kind requires desperate remedies. Chances are taken.

There are so many ways to violate the spirit of the law without committing a punishable offense, because it is impossible to prove it; the line of demarcation between that which may possibly be defensible and that which is clearly not defensible is so indistinctly drawn that you can see how easy it is to get into this, and under aggravating circum-

stances you drift and drift and drift until you are clearly in violation of the law.

Now, if my lifelong friend, with whom I have been associated in business for years, and whom I respect, and with whom I have most cordial personal associations, happens to be a representative of a rival road, it will require great pressure to lead me to try to inflict upon him the punishment which this law provides. I can not do it.

But if his company, the institution without a soul, authorizes or permits this offense, which diverts business from my company, the business over which I am in some sort a guardian, I have no compunction of conscience against bringing about the conditions which will punish that corporation. This is the general feeling which pervades the entire traffic community. I am sure this is the universal feeling among traffic men. The main thing in this connection is that we want something which will prevent the offense.

The CHAIRMAN. To illustrate, take the case of preferential rates given on beef products from Kansas City to Chicago. I have heard it said that roads bringing in cattle and hogs to Kansas City, and which had lines extending beyond there, once made an arrangement with the packers that they were to have out from there the same proportion of freight that they brought in, that there were three or four roads that did not extend beyond Kansas City, and did not bring any products or stock, and that after a time it was found that these roads were largely participating in the traffic eastward, and that thereupon they assumed that there were preferential rates, and all the other roads at once began to offer these inducements in order to secure their portion of the traffic.

Now, suppose that we were to make the change that is proposed, what probability is there that there could be that necessary volume of business secured that would break it up, under the change, rather than now, leaving aside this question of friendly regard? I do not suppose that any of the roads that felt themselves aggrieved had the proof. They knew that the other roads were getting some of their business, and they knew that it was in violation of at least an implied agreement or understanding; but did they have proof, could they have made the case if they wanted to, or might they have a greater measure of proof if we make this change?

Mr. BIRD. In the first place, Mr. Chairman, I do not believe that any such agreement or arrangement was ever made. It is a fact that a number of the lines extending between Chicago and Kansas City extend also farther west into the live stock producing country. It is also true that a stock argument between the agents of such a road and the packers is, "We contribute largely to the raw material, and we ought to have the business out." It was asserted openly, and I think under oath, by a representative of the Santa Fe Company in January, that his company contributed from 35 to 40 per cent of the live stock of Kansas City, and that it only obtained 2 or 3 per cent of the output, and that that was the reason it made a private contract with a certain house that led to all other companies making substantially similar contracts.

But I do not believe that there ever was such an arrangement as you refer to. It could not have existed without in some measure becoming public; certainly becoming known to the roads whose lines did not extend beyond the Missouri River. Nothing can be done by

what we call trans-Missouri roads—the roads lying beyond the Missouri River—in the way you speak of without making some concessions on live stock up to the packing points, and it is just as much a violation of law as any other act complained of.

Now, on the other hand, that which gives some shadow of support to the suggestions which have been made to you in that respect is this other condition. There are small packing houses at Cedar Rapids and other places similarly situated. They lie between the great initial points of the Missouri River and the Mississippi River, and there is some disadvantage on the rate on live stock in and out to the East.

After the long years of controversy and contest for that business, the packers at interior points have taken the ground—

Now, let us alone, and we will make a fair distribution of the business. You all bring in live stock to us here; all of you want to carry out the product; we will keep track of the business and divide the business in the same proportions as you bring in the live stock—

and that has been going on for years, and there is no contention or suspicion that the rates have been cut, because the rates from those packing points have been maintained; only the rate from Kansas City or Omaha being the maximum charge, that may give rise to some shadow of support to the other suggestion you make. The average traffic man is alive to all the possibilities of the situation, and is quick to see that some irregular means have been adopted, and I think that the very nature of that business is such as to enable them to find the sources of information which are required to enforce the law.

There can be many cases cited where the provision which has been suggested of transferring the penalty might not work out, but in the great, enormous number of cases there is no doubt in my mind that the transfer of the penalty would be most effective.

I know precisely what instructions I would receive from the management of the St. Paul company. There is no doubt whatever of the character of the instructions which all would receive.

The CHAIRMAN. Prior to the statements that were made by Mr. Morton in January last in reference to the action of the Santa Fe road, is it your opinion that any or all of their rivals had such knowledge of their transactions, their business, as that they could have furnished the proof that would have convicted the corporations of the offense of giving preferential rates—

Mr. BIRD. To this extent—

The CHAIRMAN (continuing). Prior to that time of his statement?

Mr. BIRD. Prior to that time. I will only say that I myself and many others might have been able to say to the Commission, "If you will examine such a man and compel him to testify you will get the facts." A great many things regarding the peculiar methods of handling this business are known to the traffic man which are not generally known to others. We could point out the men and give the reasons which convince us of the offense and the man most likely to know about it. That is so all over the country.

The CHAIRMAN. This particular method you suggest of calling this particular man, do you not suppose that the Commission have had that information all these years, that they knew of the persons who were the repositories of this knowledge?

Mr. BIRD. I doubt it.

Mr. RICHARDSON. There remains the question I am interested in,

that the chairman asked you and which I have not yet heard fully answered, because you said in answer to the chairman's question that no such arrangement as he outlined existed at Kansas City. But he went further in that question. I want to hear you on that other part of it, as to whether, if that arrangement had existed about the live stock, by what process and what means could that fact have been developed that that arrangement was made, and wherein and how does this present law give any additional means for finding that out? That is what I want to know.

Mr. BIRD. Each of the competitors of the lines adopting such practices has an army of men all over the field watching the drift of business and the causes for its changing its direction. One man has a bit of testimony here, and another a bit there, and so on all around the circle. No one item of which may amount to anything; but it becomes forcible when it is put together and collated and spread out before you until you have information which will surely lead to the designation of the person whom the commissioners may examine and from whom they may get the information.

Mr. CORLISS. They never succeed against an individual?

Mr. BIRD. I do not think they could against an individual.

Mr. CORLISS. They never have except where the individuals volunteered the information to the Commission.

Mr. BIRD. They never have in any case of which I am advised.

Mr. CORLISS. Therefore the present act requiring punishment for violations amounts to little or nothing. There has never been a punishment where there has been an imprisonment?

Mr. BIRD. No, sir; and I think very few convictions of any kind.

The CHAIRMAN. Excuse me for having interrupted you.

Mr. BIRD. The next question which I was asked to consider to-day, was presented by the Chairman. He said:

I would like to have you inform the committee, if you will, what are the elements of cost that are considered by you when you make a schedule of rates?

I have been engaged in the preparation of tariffs for many years, and I have never yet on any occasion been able to prepare a schedule of rates with any reference whatever to the cost or value of the service. In every case throughout my experience there has confronted me first: What are the competitive conditions that fix the rates for you arbitrarily? And in the 6,600 miles of railway which I represent I want to say that substantially there is no local traffic. There is not a station from or to which a rate is made that is not affected more or less directly with competition, so that you may not use your judgment as to what the service is actually worth or what it costs.

Is there anything further on this subject?

The CHAIRMAN. The purpose of that question was this: To-day I suppose there are a large number of gentlemen of large experience engaged in the fixing of rates; perhaps there may be hundreds of them.

Mr. BIRD. Thousands.

The CHAIRMAN. I do not know, but there must be a large number of men of responsibility in this matter; and they are largely high-priced men whose services bring the largest reward in the labor market. Now, the proposition is to change all that method and impose that duty upon five men, and the purpose I had in asking that question was to show that in each case of each road study, experience, knowledge,

was absolutely necessary to perform that public business of fixing a schedule of rates properly.

And I wanted to get some information as to whether it was possible to transfer that duty to five public officers, and expect that to be well done, and including in that duty the fixing of all the rates upon all of the systems of railway that we have in the United States, differing as the conditions would be in climate and a hundred other things that ought perhaps to bear upon the subject, and therefore I wanted to know what these elements of cost should be in order that each corporation should have a fair return upon the capital that it had invested in its enterprise.

Mr. BIRD. Mr. Chairman, what I have said is true, and it can be demonstrated.

It is also true that it is not within the bounds of human possibility for five, or more properly speaking, three commissioners (a majority of the board), to perform the duties of rate making. It is with the utmost difficulty that these matters are attended to by the various railway companies, each of whom keep a corps of well-trained men in this work. It is difficult for them to keep abreast of the times in the changes and modifications that are necessary. If you will multiply the number of experts so employed by a single company by the number of corporations in the country, it would be apparent that a small number of men can not perform such duties acceptably. We make rates and they are no sooner made (open and public) than unexpected difficulties arise, and the solution must be prompt, while new and unexpected conditions arise continually which must be taken into account. The service of the public demands reasonable promptness in all such cases, and it will be impossible for the Commission to do this work properly.

Nor is it possible, I think, for a body of that kind to do justice to the interests involved. In many cases where the Commission has investigated and instituted certain procedures, or given certain orders, which, upon the face of it, seem just and right, upon the attempt to put it in practical operation appears unjust; unjust to the communities as well as to the railroads, and more especially in some cases to the communities than to the railroads.

Mr. RICHARDSON. Is it not true that conditions and localities and surroundings all enter largely into the question of making rates? For instance, you take a railroad that had been projected through a sparsely developed country, and the intention of which was to develop that country, the trade or traffic is small, and should the same rate apply to that, properly and justly that would apply to a section of country which the railroad passes through that is highly developed?

Mr. BIRD. That has already been developed by the same line?

Mr. RICHARDSON. Yes.

Mr. BIRD. It is self-evident that an iron-clad rule or line of procedure can not apply universally in this country.

Mr. RICHARDSON. Do you not have to use common sense and business sense and liberality in the case of a road such as I have described in order to build up your business and to increase it, and to build up the country, and make your rates accordingly?

Mr. BIRD. Take a road which passes through the northern portion of Illinois and central and southern portions of Wisconsin which is highly developed in manufacturing industries. It is almost a second New

England. The business has been fostered and built up by judicious and liberal methods by the carriers.

But those lines extend away up in the northern peninsula of Michigan, and into Minnesota and central and south Dakota, where it is sparsely settled. It is to the interest of the people, as well as the railroads, that manufacturing and other industries be promoted, and they are promoted. You can see the growth of it. This promotion comes by departures from the published tariff rates—not secret preferential rates, for everybody is treated alike under similar conditions—but still those rates are departures from the ironclad rule. We haul machinery for all kinds of manufacturing establishments and industries, for mills and factories of every description, at reduced rates. We let a man have a plot of ground for a dollar a year upon a right of way to locate those industries upon, and so it goes.

Mr. RICHARDSON. Would not a rate applicable to both lines of road be disastrous?

Mr. BIRD. It would be disastrous to business. And in any other way it would be difficult to meet varying necessities arising in an undeveloped region, where reasonable and prompt action are conditions precedent to success.

Mr. DAVIS. Do you understand from this bill that the Commission has a right to fix a line of rates, ironclad for all roads and all sections alike, and that they would be compelled to do it under this bill?

Mr. BIRD. I do not know that, literally speaking, that would be the course, but I know this: That in fixing rates the Commission must pursue a well-defined policy, and that they themselves, as well as carriers, are bound to comply with the spirit and purpose of the act; that they would have no right or authority to defect from the law in the performance of their duties, and I know that they must be consistent from one case to another, and so on, and in a short time it would develop that the Commission was not competent—I speak respectfully of the Commission, but it would appear that they are not competent—to discharge the duties this bill seeks to lay upon them.

The railway companies do depart from the published tariffs. I assume that is entirely right, and they should do so, but they are always doing it at their own peril, and subject to criticism, and liable to be dealt with if they make a rate that is indefensible and unjust in itself and works injury to anybody else. They must carry all that risk, and they do carry it every day in building up the interests on their lines and developing the country through which those lines are operated.

The greatest work that has been done in the United States is the development that has followed the building of railroads through the sparsely settled portions of the country. No other agency has done so much, and it seems to me that the proposition is that these agents shall cease this work to a large degree, not suddenly, not abruptly, but certainly.

Mr. WANGER. After a tariff of rates has been prepared for your company, what officer is the final arbiter of the rates, where there is conference about it?

Mr. BIRD. There is no fixed rule in that respect which applies to all railways. Sometimes the duty is assigned to one man and sometimes another. In the St. Paul company I am the final arbiter unless there is an emergency, when I consult the president, the chief executive officer of the company; but in other cases it comes to me. With

some companies the general freight agent is the highest traffic agent of the railroad. And so it goes. There is no set rule. It depends upon the organization of the company.

Mr. WANGER. But there is generally some one official in each company who is the final arbiter.

Mr. BIRD. Yes, sir; sometimes the general superintendent, and sometimes the general manager, and sometimes the general freight agent or the freight traffic manager or the general traffic manager, and sometimes the vice-president or the president.

The CHAIRMAN. About how frequently in your company is there a complete readjustment of an entire schedule of rates? I mean not necessarily in the way of publication, but in the way of consideration.

Mr. BIRD. It is hard to answer that question.

The CHAIRMAN. Is it a matter of frequent occurrence?

Mr. BIRD. You take, for example, a schedule of rates between Chicago and Kansas City; that may be termed a complete schedule.

The CHAIRMAN. When I used the term "schedule," I meant one of these immense printed sheets that you publish from time to time. I wanted to get some idea of the labor involved in that matter.

Mr. BIRD. The revision of rates is constant and the publication of new tariffs or amendments to tariffs is going on every day. The printing bills for tariffs alone are an enormous expense. The change of one rate or one class of articles or one article in one class often involves a revision of rates upon a great many, and it is almost impossible to answer that question with precision; but, if you please, let me answer this question in a different form.

I have some other data here, which I referred to yesterday, which were taken from the archives of the Interstate Commerce Commission, and, as I said before, that average is there shown to be about 15½ instances a day, including Sundays, so that we have 16 or 17 changes of rates every working day, and the change of rate from Chicago to Kansas City means the change to South Omaha, Omaha, Council Bluffs, and many other points, and to St. Paul, and to Minneapolis, probably. Let me make another statement which may seem strange to you, but which has been proved on many occasions. A change of the rate on any article or class of articles from Hannibal, Mo., to St. Joseph, Mo., a distance of 206 miles, involves changes of rates correspondingly from St. Louis to Omaha, South Omaha, Atchison, Leavenworth, Plattsmouth, St. Joseph, and Kansas City. The change between Hannibal and St. Joseph involves all of those changes, and frequently between Chicago, Milwaukee, St. Paul, and Minneapolis.

The CHAIRMAN. Are those changes necessary, or simply arbitrary?

Mr. BIRD. Those just named are necessary, but I think many other changes have been made that were not necessary. They are made generally by stress of competition, and the number of changes to be made, and that are now being made since the going into effect of these injunctions, is increasing with a great velocity. As I undertook to say, the benefit which the public receives in this way is increased in great proportion, because if a rate is reduced from St. Louis to St. Paul, and is published as they are now being published in the absence of secret preferential rates, they are the maximum rates to and from intermediate points. The rates are so low and they are graded in such a manner that the reduction of a few cents on a long haul covers a great

many intermediate stations. And so the change of rates is going on continually.

A great abuse, from a railway standpoint, is doubtless going on as a result of these injunctions. It is now no longer safe to concede to anyone a secret rate not covered by a tariff. And yet the weaker lines say, "We must have business. There is one thing worse than low rates, and that is no business. We have empty cars here, and we are doing nothing." And an agent will go to A or to B who have, say, 2,000 cars of freight to be moved, and will say, "You have this freight to be moved; I want it. What rate will take it?" And the man says, "If you will give me such a rate, I will take it." What is to hinder the railroad company from saying, "I will do it, and in ten or fifteen days I will move your product?" And then he publishes that rate, and that makes it legal.

These are the forces that are now working to force down rates, a force which has never before been developed; and that is in the face of the statement repeated here that competition has ceased. These are not made-up cases. They are taken from the archives of the Commission.

There was one other question asked of me by the chairman. He said:

I would like to ask you if there is a difference on the cost of transportation produced by climatic changes; for instance, does it cost more in a northern climate to handle freight in the winter season than in the summer, in the warm weather?

Assuredly. You, Mr. Chairman, are familiar with the geography of the St. Paul line and all those great lines in the Northwest, and it has frequently occurred that between the months of November and May the cost of snow shoveling on some of those lines has exceeded the gross revenue.

I was asked by the Iowa commission, some years ago, to name a single element that in any way determined the cost of transportation. They challenged our judgment and our right to make rates, and asked me to name a single item that affected the cost of transportation, and I told them I would name one, and that was the direction and velocity of the wind; and it was not farfetched, for you know that a train running from Dubuque to Sioux City, running against a diagonal wind, a strong head wind, the engine may haul 15 or 16 loads at a low rate of speed, whereas, in good weather it may haul 25 loads. And I say that is an element of the cost. And I say, as to this provision which gives the Commission power to fix rates for the future, no intelligence, no power has yet been developed that can with any degree of certainty tell what it is going to cost in the future. It is possible by the law of averages to say what it has cost in the past, if you have the statistics, but to say what it will cost in the future in any given case is out of the question and beyond the range of the human intellect.

Mr. COOMBS. Has the geography anything to do with the relative cost?

Mr. BIRD. How is that?

Mr. COOMBS. The geography; you take the Santa Fe from California, and it runs through a level country, comparatively, while on the other hand the Southern Pacific commences to climb the Sierra Nevada Mountains, and, connecting with the Union Pacific, it has to climb over the Rockies.

Mr. BIRD. Geography certainly has a great deal to do with the

matter. Millions of dollars have been spent in the last few years to reduce grades and curves, and it is most evident that the geography is therefore to be taken into consideration. This class of expenditures are continued and are increasing. The Central Pacific and the Union Pacific from San Francisco are at a great disadvantage in certain seasons of the year, in stress of weather, and it is apparent that it is far more expensive to do business by the way of Ogden and Salt Lake than by way of the Santa Fe road.

Mr. COOMBS. You take the road across the Sierra Nevadas and you always have to have a double-capacity engine in the winter time on account of the snow and the shoveling of snow and repairing of sheds. Can you give an approximate statement of the relative cost between the two routes—the Santa Fe and the Union Pacific?

Mr. BIRD. I could not go into that. I am not for that line of argument, and I think none but an operating expert could give you such an estimate. But every practical man knows this to be true, that the Santa Fe in the winter time or in the snow season can do business much more cheaply than the Omaha, Ogden and Central Pacific lines. That is patent. The road in the spring season is sometimes blocked by snow, and all the unusual expense is going on, but the revenue has ceased; and the damages incident to detention and personal loss swell the expenses.

If the cost of the service enters into the making of a rate, it must be duly considered, and it takes a great deal of ingenuity, intelligence, and experience to determine what bearing the cost can have on the tariff. If anyone is clothed with power to make rates, that power must be limited to making a reasonable maximum rate, and they must not make a rate which is unreasonable or which is based on temporary competitive conditions, because the bill provides that their rates must continue two years, long after the necessity for minimum or competitive rates has ceased. In order to fix reasonable maximum rates they must be practical and experienced, and I find no such practice and no such opportunity for experience on the part of the gentlemen to whom it is proposed to delegate this power.

The CHAIRMAN. Mr. Bird, suppose that twenty-five loads on a dry rail in the summer time is the proper train for a given engine, in summer, warm weather.

Mr. BIRD. Yes, sir.

The CHAIRMAN (continuing). Where the lubricators are lubricating, and the oils are all in their best condition, and the packing is all in its best state, what would be the capacity of that engine; how many cars would they have to drop out in the winter time on a frosty rail, when the boxes are all frozen, as they would be in the climate of northern Iowa; how much less capacity would that engine have under those conditions than under the former?

Mr. BIRD. In extreme cases, sir, 50 per cent; possibly more. Frequently it would be 15, 20, 25, or 30 per cent, according to the degree of temperature, according to the direction of the wind, and according to the degree of frost upon the rail, and according to all these conditions which affect the moving power of the locomotive. The conditions not only affect the weight or resistance of the train, but affect the power of the engine as well.

The CHAIRMAN. It affects its steaming power?

Mr. BIRD. Yes, sir; and its wheels slip; the traction is incomplete.▲

Is there anything further on that point?

The CHAIRMAN. Nothing that suggests itself to me.

Mr. BIRD. There is another question. The chairman asked this question:

As I understand the Commission, they think they should have the power to fix the rates for the entire country, and they have stated that under a given condition, if this act should pass, it would be necessary, or might be necessary, for them to fix all the rates upon an entire system of railway. Now, is there any middle course that might be adopted there?

That question is taken from the stenographic report of the chairman's remarks yesterday. I do not think there is a middle course. I do not believe it possible, proper, or just to give to anybody the power over rates at all unless they have supreme control. I believe that if they are charged with the duty of fixing rates on a given article that duty necessarily implies that the changes they may make in that case must be met by them. I do not see how it can be separated from the whole power. Practically it can not be separated. If the question arises, if the complaint is made that the rate on soap between Chicago and Omaha is excessive, and they may determine that it is in some respects excessive and require a modification for two years at least, that may be sufficient.

But here is an opportunity and here is an invitation for the shipper of every other article in the class in which soap is included to say "You have created new conditions, and soap is not paying its proper share of the transportation charge on fourth-class goods. Other articles are paying their share, and we want this equalized. I want to ship my candles," one will say. And so a special rate is given, and so it goes on, ad infinitum. I do not see how the duty could be performed with any satisfaction to the public if it is confined to a single article at a time, and even if it is, the door is open to complaint and anyone may well insist upon a revision of the entire tariff.

I do not think that the Federal Government can properly control interstate traffic in any particular unless it can control it all, and the control lies in the rate-making power.

There is no other connected question with the subject of any considerable importance, and it is just as reasonable to say that Congress shall control the rate on soap and on nothing else as it is to transmit its power to the Commission in the same manner.

Mr. RICHARDSON. That means, does it not, that the Government can never take the control of these matters unless there is Government ownership of the roads? It reduces it to that.

Mr. BIRD. I am hardly competent to go into that question.

Mr. RICHARDSON. It ultimately leads to that argument?

Mr. BIRD. Perhaps it does, but I am only trying to say that if the Commission is to have this power conferred upon it it has to be conferred by the Government itself, and if the Government undertakes by more direct means to control interstate commerce, it can not do it effectively unless it controls it all, and it can not wisely confer upon a substitute body the power to control a part of it unless that power applies to it all, and the very act of fixing the rate on this or that article makes it immediately necessary to regulate it upon something else, and "something else" covers the whole range.

Now, aside from the complaint in regard to the abuses about which there is no controversy, viz, secret preferences. The burden of com-

plaint, the drift of the arguments in support of this measure is that there are open tariff discriminations between communities; that the rates between Chicago and New York, for instance, are disproportionately high when compared with the rates between Chicago and Philadelphia or Chicago and Baltimore. It is alleged by the proponents of this measure that discriminations of this character is the justification for pending measures. How can they regulate that unless they control every class, every article and rate in all tariffs everywhere? And immediately there comes before this Commission, under this measure, the necessity and obligation of taking in the entire traffic of the country.

There is only one question remaining, Mr. Chairman, which was proposed by you yesterday. You said:

Then I would like you to give your views as to what the remedy should be where there is an excessive charge persisted in by a carrier.

Mr. Chairman, in my opinion, if measures are adopted which substantially do away with the great offense of secret rates a new condition will be created, thoroughly new, a revolution, so far as that is concerned. Public opinion has been in some wise, perhaps, affected, limited, or restricted, more or less, by the fact that a number of large shippers have been able to get benefits which their neighbors have not had, and those men very largely mold public opinion. Wipe that out. I believe it can be done effectually; and then when it appears that a rate is extravagant or extortionate or unreasonable, and has been so pronounced, public opinion will be much more effective.

But I do not rely upon that as a remedy, but only as one of the things to be taken into consideration. I do not see why proper and prompt measures may not be obtained. I do not see what is to prevent injunctions or any other processes which are open to the Commission at this time, processes which bring about a speedy determination of the reasonableness of a rate. It does not follow that because somebody complains a rate is unreasonable. Because somebody persistently insists upon it and continually follows the Commission with complaints, it does not follow that that rate is unreasonable. It may be a vital point for the carrier, and the carrier should be at least assured of the protection which the law affords to other people in the protection of their property, and in this case it seems to me that the process is swift enough. But, as I said before, I feel incompetent to discuss these questions from a legal point of view, and a gentleman will follow me at the pleasure of this committee who is better able to discuss that than I am.

Mr. Chairman, I have been interested, as the defendant, or the representative of the defendant, in a very large number of cases. I can not remember a single one which has come from the producer, from the owner of the property. In every case which I call to mind, and I am willing to say now that the majority of the complaints have come from the middleman, the man who does not pay the freight. I do not question the right of that class of men to appear before the Commission and make their complaints. They have a legal right to do so, but it is a thing which I think this committee, representing Congress, can well afford to take into consideration. Their quarrels are as distinctly quarrels for supremacy over their competitors as ever was a quarrel between railroads for supremacy. And the Commission is,

and always will be, used as a forlorn hope to beat the other class of men and the other community. And perhaps it is right.

But it is a fact that the man who pays the freight seldom complains. The very thing that one community complains of is the very thing that pleases the producer, because he can ship somewhere else at a higher rate of profit, and because there is always in such cases an element of competition which adds to the value of his property. And in most of the cases, if these complaints were sustained, it would in a large measure reduce competition and deprive the producer of a profit which he had previously had.

Mr. DAVIS. Somebody before us, I do not know who it was, a week or so ago, took the position that the producer was not the man who pays the freight anyway, and I tried to get him to go to the last analysis of that and admit that the producer paid the freight, but he never did. I understand your position to be that—

Mr. BIRD. If the tariffs on wheat from the wheat belt to Chicago, Milwaukee, and Duluth is maintained, if there are no secret preferences to the middleman, then the price of wheat at the wheat fields, at the farmer's door, is the price of the wheat at Duluth, and Minneapolis, and New York, and Liverpool, whatever place it may be, less the freight and reasonable commissions.

Mr. DAVIS. That is exactly my idea. This man would not admit that.

Mr. BIRD. You can not get away from that. That is so plain that the man who runs may read it.

Mr. Chairman, I could occupy your time further if it was proper, but I will not trespass upon your time unless you or members of the committee wish to ask me any questions.

I thank you very sincerely for the consideration which has been given to me.

The CHAIRMAN. We will resume these hearings on Tuesday next at half past 10.

(Thereupon, at 11.40 a. m., the committee went into executive session, at the conclusion of which it adjourned until Tuesday, May 6, 1902, at 10.30 o'clock a. m.)

INTERSTATE COMMERCE COMMISSION,
Tuesday, May 6, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Mr. Blythe, if you are ready to proceed, the committee will hear you.

STATEMENT OF MR. J. W. BLYTHE.

Mr. BLYTHE. Mr. Chairman and gentlemen of the committee, I have been asked by representatives of a number of the railroads in the West and South to present their views, which are my own as well, upon some of the general features of the legislation pending before this committee, and especially upon the general features of the Corliss bill. It is my wish to follow in what I shall have to say the will and suggestions

of the committee, or members of it, and if I should wander away from the subjects that seem to them most pertinent, I shall be very glad to be recalled.

The Corliss bill has in it certain definite grants of power as to the control of rates, which is the most important feature of the bill, and which, if the committee please, I will reserve for a few moments and discuss very briefly some of the remedial features of the bill, simply to meet the inquiry of the Commission as to what the views of the railroads in respect to those are.

I have not had the privilege of hearing the testimony before the committee on the part of the proponents of this legislation, but I have read with care the most of it, and especially the suggestions made by the members of the Interstate Commerce Commission. The complaint seems to be directed, first, to preferential rates, the payment of secret rebates, discriminations in favor of individuals or of communities, and, finally, and in a most important sense, was alleged the want of power in the Commission to give effect to its judgments, and in respect of all of these there seems to be a definite claim that the power to fix rates is necessary, while, incidentally, it is claimed that certain other powers should be given.

The most important remedial feature of this act is as to the method in which the proof should be taken and the effect to be given to the award of the Commission. The bill provides that the award of the Commission, the finding or judgment of the Commissioners, shall be conclusive unless it shall be suspended by order of a court upon an appeal, "where it clearly appears," I believe is the language, that the order was erroneous. The further provision is that the testimony shall all be taken by the Commission; that any court to which the case shall be afterwards removed, or "appealed," as the language of the act runs, shall proceed only upon the evidence taken by the Commission, and if that be found to be insufficient or in any way defective, that it shall be remedied by reference back to the Commission for the purpose of taking further testimony.

I think, Mr. Chairman, that I may say that the whole history of our Government may be challenged for any such limitation upon the power of the Federal judiciary. I believe it to be anomalous and without parallel, and the only parallel that is cited is cited, I believe, by Mr. Bacon when he says that it is analogous to the finding of the board of appraisers in cases of imports into this country. But, if the committee please, there is this important distinction to be taken there. The appraisers sit as an arm of the Government in aid of its taxing power, the power where the intervention of the judiciary is simply a waiver by the Government of its prerogative, because the Government could and did, in the absence of constitutions and before the days of constitutions, put its hand into every man's coffer and take out what it wanted for purposes of government without any special judicial determination as to whether that act violated any of his rights.

And even in this case the person upon whom the tax is levied or the property upon which the tax is levied, to be more accurate, has no appeal. There is no judicial determination as to the propriety of the right to levy a tax or as to the amount of the tax which is collected. That rests entirely in the will of this Congress; it rests always in the will of the Government, and is an exercise of high prerogative. No other case has been cited at this hearing, no other analogy, no other

parallel, to this legislation. But a year or two ago the Interstate Commerce Commission, speaking for itself, suggested that this method of taking testimony was analogous to the taking of testimony by a special master, the taking of testimony in all courts of equity by masters or commissioners appointed for that purpose.

But here is an important distinction to be taken between a master in chancery or a notary public sitting as a master, or any person to whom the power of the court is given in aid of its power to take testimony; no matter how it is done, done by agreement of parties, under a statute or rule of court, no matter how it is done, the court has control of that officer; the officer is an officer of the court; he is an arm of the court, subject to its direction, and no person can be compelled to testify before a master or a special commissioner if he chooses to invoke his constitutional right to ask that he be taken before the court and there given an opportunity to be heard upon the question whether the testimony is material, relevant, and whether the compulsion to testify under the circumstances is an invasion of his personal and constitutional rights. No such provision is in this act; never has been any attempt in this act to preserve the constitutional rights of the witnesses; nor in any other legislation which has been proposed upon this subject.

Now, there is another very important reason why the Commission itself is absolutely incompetent, why it is disqualified, and ought to be disqualified from acting as a commissioner to take testimony in a case of this character, and what I have to say, Mr. Chairman and gentlemen of the committee, upon this subject I say with very great diffidence, for all the gentlemen composing the Interstate Commerce Commission are men for whom I entertain the highest regard, and with whom I am on the most friendly terms and with whom I have companionable and pleasant personal relations. I do not wish to assail their purposes or their motives in any way. I wish to assail only the organization, the functional structure of the body which they compose, which renders them incompetent to enter upon an investigation of this sort. The Commission is a partisan body; a body framed to be partisan. The interstate-commerce law made it a partisan body.

Commissioner Prouty testified before this committee last week or week before that it was a partisan body. Every commission of this character that ever has been erected under any law of the United States, or under any law of any of the States, has been recognized to be so. As Governor Larrabee said, in a communication directed to the legislature, apropos of the Iowa State commission, "the commission is a committee of the people. The railroads can be trusted to take care of themselves." That has been the fundamental idea of every commission ever erected, and it appears in the original act to regulate commerce—the Cullom bill.

There is no provision in that bill anywhere that the Commission shall proceed as a judicial body, or that it is charged with the duty of preserving and safeguarding the interests of the railroads, but the whole spirit and intent of the act to regulate commerce was that the Commission should represent the people, that everything they did should be done at the expense of the Government for the complainant as against the railroads, and that in all the functions which that Commission was called upon to exercise it was to be jealous of the rights of the people,

the rights of the shippers, to remedy and prevent the abuses that the act contemplated.

Mr. Chairman, can a partisan body, can a body that is organized for the purpose of looking after the shipper and jealously caring for and looking after the interests of one party to a litigation, that is itself generally a party to the cause, be a proper body to take all the evidence and make up the record upon which the rights of the other party shall be heard and determined by the judicial branch of the Government?

And there is another reason. The Interstate Commerce Commission is an extra-constitutional body. I do not say it is unconstitutional, I do not assail the power of Congress to pass this act, but I say that it is an extra-constitutional body. There is no word in the act which makes this Commission the arm of any one of the constitutionally recognized departments of the Government.

It has powers which the Commission themselves say are partly legislative, partly administrative, and partly judicial—quasi-legislative, quasi-judicial—ringing the changes on those terms. The act does not make this Commission or Bureau responsible to any department of the Government. The act provides not that they shall report, except to Congress. They shall report to Congress certain things, what they do they shall give publicity, and all that, and they are to report to Congress the things which they recommend shall be done in the way of further legislation or further remedial action, to give effect to the purposes of the law. I do not think it would be an extravagant thing if I should say that it could not be successfully challenged that no member of the House has ever read the reports of the Commission. I doubt very much if any member of this committee has ever carefully scrutinized the reports of the Commission to see what they have done in response to mandates of this character.

The result of this, if what I have said is true, is that to give this power to the Commission to take evidence is an unconstitutional exercise of the legislative power—

Mr. COOMBS. What?

Mr. BLYTHE. It is an unconstitutional exercise of the legislative power. That is to say, Congress has no power to confer upon the Commission the right to take evidence in a case which is one, recognized as one, for judicial determination.

Mr. COOMBS. You are speaking about the judicial features?

Mr. BLYTHE. I am speaking only about this judicial feature: That the judiciary shall be limited in any case properly brought to its cognizance by testimony taken in any extraconstitutional way, taken outside of the rules and limitations and precedents of the law and the Constitution is, it seems to me, a wholly unconstitutional thing.

I do not think I need to enlarge upon that, because it follows, I think, from what I have already said about the structure of the Commission itself. I think it follows, too, that if an order of the Commission is made, and if the railroad companies think that their rights are invaded to the extent that it becomes necessary for them to appeal to the courts, that in order to avoid very grave injustice and oppression it is necessary that the appeal to the courts should in some way supersede the order until the courts may themselves pass upon the propriety of it. Any other rule than that, of course, as we have found in some cases, is to take away practically all the advantage of the

constitutional right to go into the courts to have your controversy determined. I do not, of course, mean to say that the appeal of itself should supersede the order. I do not think that is necessary, nor do I think it, on the whole, expedient.

But I do not think that the court should be vested with the same discretion that a court of equity will exercise in every other class of cases which come before it for determination, and in its discretion supersede any order which may tend to work injustice if not superseded, and keep the rights of both the parties litigants in abeyance until the courts may act upon it. Therefore I think that this bill should be modified so that the appeal to the court taken within a reasonable time—and by the way I think that twenty days is entirely too short a time and should be extended—the order should be modified so that the appeal will of itself suspend the writ, as this act provides for a few days, after that the court may suspend the writ, or permit it to go into effect at its discretion upon a review of the case as it is presented by the parties.

Of course, what I have said in that connection will affect also the provisions on page 6 of this bill, that an appeal to the Supreme Court shall not operate to stay or supersede the order of the circuit court. That is a matter that should rest in the discretion of the court. It is not uncommon, it is almost, I think, the invariable rule, that the courts may exercise their discretion to grant a supersedeas in all cases of appeal, and that power, I think, should be preserved in this bill.

Mr. RICHARDSON. Right there, on page 6—

Mr. BLYTHE. Yes, sir.

Mr. RICHARDSON (reading):

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

Mr. BLYTHE. Now, Mr. Richardson, if you will permit me, the only thing that I object to there is the phrase "it plainly appears." Mr. Knapp, if I am correctly informed, acknowledges that that is too stringent and might be construed as only requiring the court to suspend the order in a case where some very manifest injustice is to be done.

Mr. RICHARDSON. Then that language would only convey the right and power to suspend any order of the Commission until the further order of the court?

Mr. BLYTHE. Yes, sir.

Mr. RICHARDSON. That is, that the full effect of the appeal should be granted to the defendant?

Mr. BLYTHE. Yes; the rule that applies in every other equity case. That is the only thing the railroads ask; that the rules that govern other business shall govern theirs. If we can not live under the law, we can not live at all.

Mr. COOMBS. You think that anything else would not be due process of law?

Mr. BLYTHE. I think not. While perhaps it will be going too far to say that such a provision as this would be clearly unconstitutional, I say that it is clearly unjust.

Mr. COOMBS. Here is the proposition: Due process of law, of course, is a very common term, but is it necessarily an inhibition on the legislature of providing for a procedure in one case where general procedure might perhaps be applied to other cases; that is, special procedure of court, mind you—

Mr. BLYTHE. I should say no, so far as it affects remedies and procedure only and not the substantial rights of the parties, but such legislation must not curtail constitutional safeguards.

Mr. COOMBS. That is always dependent upon the question of whether it does curtail constitutional safeguards.

Mr. BLYTHE. Always.

Mr. COOMBS. Now, this is only a change of method of procedure; it is not anything more.

Mr. BLYTHE. Is it not something more in the attempt to give to the Commission a restraint and a limitation upon the courts in respect to the making up of the evidence?

Mr. COOMBS. Pending an appeal?

Mr. BLYTHE. No; I am talking about the other question of taking evidence. So far as this matter of the suspension of the writ is concerned, I say leave it entirely to the courts; and I do not say that it would be unconstitutional, Mr. Coombs, for the legislature to take away that right. It would be unjust and oppressive, but I do not say it would be unconstitutional. I do not know whether it would or not.

Mr. RICHARDSON. What is the trouble, if the Interstate Commerce Commission should fix a rate; it seems to me that their complaint is that they can not enforce their orders. What is the trouble if they can not fix a rate; as to the remedy of injunction, why would they not be protected in that?

Mr. BLYTHE. I think they are abundantly protected in that in the act to regulate commerce as it stands. I think they have all the power that Congress ever could give them.

I was just about to proceed with the discussion as to the giving to the courts more clearly the remedy by injunction in cases brought before them by the Commission, where that remedy is sought. It seems to me that resorting to the remedy by injunction, the interests of the shipping public as well as the railroads would be amply protected. It strikes me that way. I can only say again that if a railroad can not live under the law it can not live at all. We have got to live under the law. That is all we want, but we want the same law that everybody else has. The Chicago, Burlington and Quincy Railroad has 40,000 employees. They have relatives and friends, and our relations with the whole community are intermingled. We only want to live under the same laws, rules, and customs that everybody else that we are associated with has to live under, and if we can not live under that law we can not live at all. Have I met your inquiry?

Mr. RICHARDSON. Yes, sir.

Mr. BLYTHE. As to the remedy by injunction I wish to say only this: I believe in the remedy by injunction. I believe in the arm of the Federal courts. I believe in the rule that courts of equity should expand and enlarge their jurisdiction. I believe that the greatest safeguard of republican institutions lies through the equitable courts of the Federal and of the State governments. Therefore I should like to see any enlargement of the Federal jurisdiction, especially of the equitable courts, that human ingenuity can devise that is calculated

to meet any of the evils of our civilization. And I believe that the act to regulate commerce as it stands to-day confers that jurisdiction upon the Federal courts in as large and as plenary a way as this bill does, although not in so distinct terms, and the only reason I should object to the enactment of the provisions of this bill into law at this time grows out of certain circumstances obtaining in a way to which I wish to call the attention of the committee briefly.

The Government of the United States, I believe, at the instance of the Interstate Commerce Commission, and more directly at the instance of the President of the United States, has caused a number of suits to be brought restraining the railroad companies of the West and the South from paying rebates or further discriminating in any way between shippers and localities. It has been doubted whether the Federal courts have that jurisdiction. That has been questioned. I myself believe that the power is complete. The Government believes so, but it is a mooted question, and it will be raised before the courts in which those suits are pending.

My own judgment is that it is very desirable that the jurisdiction of the courts in those cases should be sustained, however the cases shall be finally decided. But with that question open, that question mooted, if the Congress should now legislate conferring that power, is there not danger that the courts would say:

Congress has itself construed its own act, in the absence of any judicial determination, and that must be taken into the account, and in view of that we will hold that the Congress did not intend by the act to confer this equitable jurisdiction upon the courts.

In that case the cases now pending would fail and the parties would be put back where they were before the suits were brought.

Mr. COOMBS. Do you think the court might take that as a rule of construction?

Mr. BLYTHE. I think so. If that objection is a valid one there is no doubt about that.

I think, Senator Faulkner, that that is all I have to say on that point. Is there anything more?

Senator FAULKNER. I believe not.

Mr. BLYTHE. There is the further question as to the penal provisions of this act, as to who would be liable in case of criminal violations of the law. The law now provides that the corporation shall be liable, that any agent, officer, etc., of the corporation shall be liable, and it provides in certain cases that the shipper shall be liable. But the provisions in respect to the liability of shippers are of such a character that a discrimination must be shown before any shipper shall be criminally liable.

The shipper is also criminally liable if by false weighing, and all that sort of thing, or any device, he fraudulently gets a lower rate. He is also liable if he pays a lower rate than somebody else is contemporaneously paying, by way of rebates; but he is not liable if he accepts rebates which are open to everybody or paid contemporaneously to everybody else.

I have nothing to say in addition to the arguments which have been advanced here by the Interstate Commerce Commissioners and by Mr. Bird as to the reasons why the present liability of the agent of the corporation should be removed.

I believe that it is a clear case that the ends of justice will be furthered by that, for the reasons they have given. The agent of a corporation is a mere servant, mere agent, and it may be one agent of the corporation to-day and another agent of the same corporation to-morrow, and half a dozen men representing some corporation to-day, engaged in a case of this sort in the carrying out of the instructions of superior officers representing the corporation or possibly the corporation itself. For fifteen years the attempt has been made to get the evidence of violations of the law of this character that would result in the punishment of individuals who are employed by the corporations, and those efforts have signally failed, I believe, in every case. There have been one or two cases, only one or two, and in those cases the facts were very unusual. I believe that if punishment were restricted to the corporation itself it would be found very much more effective.

As to whether or not the shipper should be liable, I am clearly myself of the opinion that the shipper should be liable equally with the corporation. Of course, the same reasons that apply in the case of the railroad would apply to the shippers, where the person technically receiving the rebate is a mere servant and a mere intermediate. The punishment ought to fall upon the real beneficiary, whether as individual or corporation, and I believe that it would not in any way tend to make convictions more difficult to make the shipper liable.

Mr. RICHARDSON. If the larger includes the less—if you put the punishment upon the corporation—would you not be stopping the opportunity of the shipper to avail himself of the rebate? Why not put it upon the corporation and exempt the shipper?

Mr. BLYTHE. The reason for that is this: The giving of rebates to shippers is in every case of which I have ever had any knowledge a case of sandbagging.

Mr. ADAMSON. Don't you think the attempt should be punishable even if he does not succeed; if he just solicits the rate should he not be punished?

Mr. BLYTHE. I think I would hardly go as far as that. If you applied that to the ordinary rules of life there are many of us who would find ourselves in a very disagreeable situation. I do not think you ought to limit ingenuity in that way.

Mr. ADAMSON. I do not call it ingenuity to violate a public law. That is rascality.

Mr. RICHARDSON. Is not your position this, that you are prohibiting the exercise of the natural disposition on the part of men to go and solicit the very best terms that they can. You are making it a crime for them to do that. A man goes to an agent and wants his goods shipped, and he wants them shipped on the very best terms, and he goes innocently and goes without knowing the terms prescribed by the railroad. The agent may agree with him. He may say, "I will send your goods at so and so on the regular published tariff rate," and yet afterwards they will turn him over a rebate. Now, ought that man be punished criminally?

Mr. BLYTHE. If he does it knowingly.

Mr. RICHARDSON. Yes; he is supposed to know what the law is.

Mr. BLYTHE. Suppose he actually knows?

Mr. RICHARDSON. He does not know until the rebate is handed back to him.

Mr. BLYTHE. I think you must have the scienter.

Mr. ADAMSON. All those questions are governed by the laws restricting procedure, and it seems to me if you make anything a crime, the attempt to do it ought to be a crime, if it fails also.

Mr. BLYTHE. Well, I think, if you please, that is going a long way. There are some crimes where it is undoubtedly true. But who ever heard of a man being punished for murder for the mere attempt made. He is punished for the crime of attempting it.

Mr. ADAMSON. With intent to murder. Assault with intent to murder.

Mr. BLYTHE. Assault; yes, sir. He is punished for the assault.

Mr. ADAMSON. That is an attempt.

Mr. BLYTHE. But the attempt to murder is never punished as a murder.

Mr. ADAMSON. It is just a different name for it. Attempt with intent to murder means an attempt to murder.

Mr. BLYTHE. There must be some overt physical violation of the rights of the victim before any man can be punished.

Suppose I go to your hotel with the intention of attempting to murder you, but before I get there something diverts me and I go back.

Mr. ADAMSON. All that has been provided for for ages.

Mr. BLYTHE. Yes; that is not a crime.

Mr. RICHARDSON. Don't you think if you make the penalty large enough and impose it upon the corporation it would stop rebates? The attempt would be prevented then.

Mr. BLYTHE. I think that in that view you leave out of sight—I think there is much to be said for that side, but I think you leave out of sight this consideration: Suppose that Mr. Armour in the old days—let us suppose a case which can not now happen, because all the men are dead—suppose that Armour, who, in the old days was the head of the largest packing company in the world, and suppose he had gone to Alexander Mitchell, president of the Milwaukee and St. Paul Railroad. Those two men were warm personal business friends, in a great many enterprises together, and confident of each other.

Suppose that, as I say, Armour had gone to Mitchell and said to him:

Of course, your company is liable here under great penalties if it should pay me a rebate, but you have got to do it. If you don't do it I am going to give all my products to somebody else.

Suppose that Mitchell had given it to him under the stress of that threat. Now, there is a thing that you can not prevent. I do not say you could reach it under any law, that particular case, but I say that is the way rebates are paid to-day.

Mr. ADAMSON. The fact that there are some extreme cases that you do not catch ought not to deter society from making salutary laws?

Mr. BLYTHE. I do not speak of this as a reason for not making the law. I say it is a reason why you should punish the shipper. I say it is the crime of the shipper. I say it results invariably from the pressure of the shipper. There never has been an exception, in all my knowledge, where the railroad company has gone to the shipper and tried to seduce him into accepting a rebate.

Mr. ADAMSON. I think you could clear them of that very easily.

Mr. BLYTHE. It is not the railroad who is guilty. It is the shipper who is guilty in all this rebate business.

Mr. RICHARDSON. Don't the railroads, when the competition becomes

very keen and active, go out among the people and solicit their business?

Mr. BLYTHE. Certainly.

Mr. RICHARDSON. That is where the rebate commences, in their soliciting the people to come in and let them have their goods and take them at a less rate than the others, and there comes in the rebate.

Mr. BLYTHE. Of course, it is a cause of uneasiness to trade; there is no doubt about that. But I say this, I say that the history of this whole business where the rebates have prevailed the most, along the Missouri River towns, the whole history of it will show that the rebate is paid because it is exacted by the big shippers.

Mr. RICHARDSON. Right in that connection, what remedy have you to stop rebates? You admit they exist, that the railroads are guilty of this practice. What remedy, under the law, have you to stop this?

Mr. BLYTHE. I confess that upon that subject I do not see any remedy. The best remedy is the remedy that the Commission proposes, first, to punish every violation which you can discover, criminally punish the corporation which pays the rebate, and punish them so severely that they can not afford to take the chances. Severe pecuniary fines for paying rebates is the punishment best fitted and most likely to be effectual, and I am inclined to think that the remedy by injunction is the best remedy supplemental to the criminal feature of the law that is worth anything, or that can be devised.

Mr. RICHARDSON. Well, you admit, are bound to admit, I reckon, that if the custom and habit of rebates is not remedied, that that puts into the hands of a railroad corporation the power to advance one community and destroy another.

Mr. BLYTHE. It does not for this reason—the railroads are not a unit. You are not dealing with one railroad, nor are you dealing with a lot of railroads reaching only communities and markets common to all. You are dealing with a lot of railroads which have separate interests; and each railroad is influenced by the competition of its own markets, and with the markets of other roads, and the necessity of building up the traffic on its own lines.

One great vice in the whole consideration of this subject is in overlooking the fact that you are not dealing with one railroad, nor with all the railroads as a unit, although you are making a law applicable to all, but you are dealing with a lot of railroads with different interests, strongly and always in competition with each other; one set of railroads trying to build up one part of the country, and another set of railroads trying to build up another part of the country, and all watching each other in the most jealous way.

Mr. ADAMSON. And sometimes hurting each other as much as they hurt anyone else?

Mr. BLYTHE. Often hurting each other worse than they hurt anybody else, for the paying of rebates does not necessarily injure anyone. It is not malum in se.

Take this case of the rebate on packing-house products and dressed meats from Kansas City. It was established at the recent investigation by the Commerce Commission that for a period not a pound of those products moved out of Kansas City except upon the payment of rebates. It was also established that there was no discrimination and nobody was hurt. Omaha did not complain. Cedar Rapids and Des Moines and other places similarly situated did not complain. They were not

hurt. The traffic was moved at 5 cents a hundred below the published rates. The only offense against any law or against any principle of justice was the offense against the statute, the act to regulate commerce, requiring an adherence to published tariffs. That was the only offense. The stuff was carried to the markets cheaper, and reached the consumer cheaper, and what followed when it stopped? The evidence showed that large amounts had been paid in rebates. When that was stopped, the price of beef almost contemporaneously went up all over the country and people said it was the beef trust. But is it not possible that the cutting off of the rebates added to the cost of getting beef to the markets, and that this increased cost had a tendency to raise the price?

Mr. RICHARDSON. Then you think there is no such thing as the beef trust?

Mr. BLYTHE. Oh, I do not say that. I do not say that at all. I know there is. I do not say, either, that that was the only factor that raised the price of beef, but I say that may have been one of the potential factors.

Mr. ADAMSON. Did that pay the roads for the service they rendered?

Mr. BLYTHE. That comes to another branch of this subject, which is the subject of making rates.

Mr. ADAMSON. I thought it might help you to relieve the condition in the beef market by publishing those rates minus the rebates that are paid.

Mr. BLYTHE. That is one of the methods that is proposed. It is a pretty drastic measure.

Mr. ADAMSON. I wanted you to do that voluntarily.

Mr. BLYTHE. You can not do it voluntarily, for the reason that the rate is too low. The rate actually received on packing-house products and dressed beef is too low, but made temporarily under the stress of severe competition.

Mr. ADAMSON. That is the first question that I asked.

Mr. BLYTHE. Undoubtedly the roads suffer by it. The rate is too low and the roads can not afford to maintain that rate.

Mr. ADAMSON. That is the first question that I asked you, If you paid for the service?

Mr. BLYTHE. I asked a member of the Commission the other day what he thought of the published rates of the packing-house products from Kansas City to the seaboard, and he said he thought the published rates were too low; and I believe that if the Commerce Commission to-day was charged with the duty of fixing the rates, one of the last things they would to-day think of would be cutting down published tariff rates on packing-house products and dressed beef. Why? Because those products do not to-day bear their just proportion of the burden of the cost of transportation. The roads have to get their pay out of their business, and packing-house products and dressed beef do not pay enough, relatively, to other things.

Mr. COOMBS. You contend that the consumer gets the benefit of that?

Mr. BLYTHE. I contend that the consumer did get the benefit of the rebate, to an extent.

If you will permit me, Mr. Coombs, the packing-house interests are not always harmonious with the railroad interests, and I find myself sometimes differing from them and I have not any brief for them at

all. But the packing houses of this country have done an enormous service to this country in reducing the price of meat products, the products from all sorts of live stock, to the consumer. They have economized. They have spent vast sums of money in utilizing and learning how to utilize, and give to the consumer, all the possible products of cattle, and hogs, and sheep, and so on. And they have pursued a very wise policy. They have been wiser than most men who have in some sense a practical monopoly of a trade. They have aimed everywhere to put their products at the door of the consumer at the least possible cost and that is the principal feature of the complaint made before this committee.

Who is it complaining here? It is the middleman, the middleman who is being eliminated, and properly eliminated from the trade of this country, by the action of the great firms in bringing their products right to the consumers themselves. "From the factory to the foot," as the sign of one of the shoemakers reads. I do not attack the middleman. He has had a most valuable economic place. He has to-day in many things. You can not eliminate the middleman entirely. But to the extent that every profit can be eliminated between the man who must get a profit for his labors in producing anything that meets human wants, and the man who is finally to consume the thing produced that is an advantage to the world.

Everything that cheapens these articles, everything that adds to comfort, gives more shoes to wear, and better houses and more clothes, is for the benefit of mankind. The beef trust does that, and it has done it for twenty-five years, not as a trust, but these packers, these large aggregations, that capital which I am willing you should call the beef trust. Swift has done it, and Armour has done it, and Nelson Morris has done it.

Mr. RICHARDSON. And they do it through the medium of rebates?

Mr. BLYTHE. Sometimes, and to some extent; not always nor principally.

Mr. RICHARDSON. But that is one way?

Mr. BLYTHE. Not always.

Mr. RICHARDSON. I want to get information about this, of course. Suppose all those interested got the privilege of a rate, who would have a right to complain if there was no discrimination, or no discrimination between that class of people, who would have a right to complain, who is hurt?

Mr. BLYTHE. Nobody did complain, Mr. Richardson.

Mr. RICHARDSON. Who would be hurt?

Mr. BLYTHE. Nobody would be hurt; nobody was hurt in the case as was shown in the recent investigation.

Mr. RICHARDSON. Does it not lower the cost of the products to the producer?

Mr. BLYTHE. Certainly.

Mr. RICHARDSON. Does not that tend to this argument, that instead of some arbitrary standard or rate there ought to be some elasticity of that rate?

Mr. BLYTHE. Do you want me to answer that question?

Mr. RICHARDSON. Yes.

That question goes somewhat outside of the range of the bills under consideration. I myself believe that there is no possible middle ground between absolute commercial freedom of the railroads and

Government ownership. In saying this I do not wish to be understood as objecting to such supervision as may be found in practice necessary to enforce an observance of the principles of the common law which have been declared in the act to regulate commerce, and am talking about commercial freedom only. The Federal judiciary has consistently held that the act to regulate commerce was not intended to limit the commercial freedom of the railroads and did not have that effect.

Judge Jackson, in 1890, three years after the enactment of the act to regulate commerce, said, in a case reported in the Forty-third Federal Reporter (p. 37):

Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits.

The Supreme Court of the United States has three times cited that language at length, and the last time in this very much talked about maximum rate case, reported in 167 U. S., 493. Now, I myself believe that railroads are to be treated, as they always have been treated under this Government, as private enterprises. I believe that the making of rates can and must be governed by what Mr. Nimmo referred to the other day as the "interaction of forces;" that the rates will adjust themselves if not interfered with, but left to the laws of trade; that they are made by a grinding process, by the pressure from all the circumference everywhere upon a center. That is so and always has been so, and there never has been a rate made in any other way, and that in itself is the only safeguard, and I believe it is an efficient and complete one.

There is the other policy, the Government ownership, which I believe would bring the commerce of this country into inextricable disorder in thirty days—I do not know but in thirty minutes.

Unless some member of the committee wants to ask me some questions, I would like now to talk about the rate-making power.

Mr. ADAMSON. If the Government should authorize the Commission to make rates, and the rates which they made affected or seriously injured the railroad, would that action be accompanied by an obligation on the part of the Government to recoup or make up the loss to the railroad?

Mr. BLYTHE. I never knew or heard of any legislative act, except those in the exercise of eminent domain and like matters, no matter whom it might menace, being accompanied with any provision that the State would make good any losses suffered by a subject of the State. Of course, there can not be.

Mr. ADAMSON. You think the Government ought to take such action as that if it is not so accompanied?

Mr. BLYTHE. If the Government makes a mistake there can be no reparation, and for several reasons. No government ever stood behind the subject to protect him against the consequences of general legislation. You can make a tariff law that hurts a lot of people—

Mr. ADAMSON. If the Government does not repair injuries, ought the Government to inflict injuries?

Mr. BLYTHE. Of course, I am very glad to notice that suggestion. That is a grateful one to me.

I do not think that the Government ought to do anything unless it is very clear that the public good on the whole is so imperatively involved that the incidental injury to individuals must be ignored. Of course, the Government ought to be careful how it invades anybody's rights. And I say further that the presumption is always that legislation of this sort, any legislation which disturbs conditions which have existed for a long time in a Government like this, any legislation which disturbs commercial relations, will hurt somebody, and therefore it ought not to be indulged in unless it is most imperatively demanded by the general welfare.

Mr. ADAMSON. What condition would the public be in as to remedial or corrective proceedings if we authorized the Commission to make rates, if we should then get three good railroad men on the Commission?

Mr. BLYTHE. The best railroad men in the world—it does not make any difference who they are—take the best ones, take those who would try the hardest to do justice to the railroads, there are no three men who can cope with that question at all. There is nobody competent to do it—least of all the Commission. They say they are experts. They are very worthy gentlemen, but they are not experts.

Mr. ADAMSON. I suppose if the Commission was vested with the power to make rates it would be to the interest of somebody to see that the appointees were favorable to the railroads.

Mr. BLYTHE. Of course there is that suggestion that I am very reluctant even to hint at, that giving this power to the Commission will necessarily invite a participation in politics on the part of the persons who are interested, which is very much to be deplored.

Mr. ADAMSON. Would it not be imperatively necessary for the railroads to try to do it?

Mr. BLYTHE. I would not like to go as far as that, but I would say that the temptation was very great. The act to regulate commerce, so far as its general principles go, was for the most part declaratory of the common law. There are three or four sections in the act, all of them directed against excessive rates, which means, of course, extortionate rates, giving undue preferences or making discriminations, and the so-called long and short haul clause, which is only a prohibition of a specific kind of discrimination. Every other feature of the act to regulate commerce was purely remedial.

The act was declaratory of the common law, and remedial, and that is distinctly recognized by the Supreme Court of the United States in the language which I have read, quoted from the opinion of Judge Jackson. That was recognized by the Commission itself in repeated declarations, and I want to say now, to the committee, that the assertion by the Commerce Commission, or the individual Commissioners, that their right to fix rates never was questioned, is not consistent with the history of the Commission, or with their own adjudications. On the contrary, the Commission never attempted to exercise, never asserted, the power to make rates, until at least three years, I think—I am not sure about the time, but for a considerable period—after the enactment of the law.

The Supreme Court of the United States—I have not the language here and can not quote it exactly, but in the decision in 167 United States—in the maximum rate case, Justice Brewer quotes from Judge Cooley language to the effect that the Commission in that case could not prescribe a rate because it had not the evidence; but that in a general way it had not the power to make rates, and the Supreme Court says there is no shadow of foundation for the claim that the Commission had power to make rates, to be gathered from the four corners of the act.

The claim on the part of the Commission that the act to regulate commerce had conferred the power to make rates was the outgrowth of its discovery that it already had an enormous power, for the exercise of which it was responsible to no one. I need not point out to you the boundless visions that will invade the minds of men hypnotized by the habitual exercise of irresponsible power.

Here is a Commission, extra constitutional, and bound to nobody. It can be discharged by the President for incompetency. Otherwise it is absolutely irresponsible. The trouble with them is they want a lot of power which it was never intended they should have, and they themselves never supposed they had, until several years had passed by from the time the Commission was created. I say this with great deference, and asserting my profound regard for the personal character of these gentlemen.

Now, only one of these Commissioners in his remarks before you has suggested any reason whatever why the power to make rates is applicable to the mischiefs which have been complained of.

Commissioner Knapp had a great deal to say about discriminations and payments of rebates, and a great deal to say about certain remedial aspects of this bill, in most of which I concur with him; only I think he very much exaggerates and overstates in his own mind the extent and evils of rebates. Mr. Commissioner Prouty, however, did give a reason as to the power of making rates, which, if true, might justify the interference by the Congress through the Commission, or by some other way, in respect to the control of rates, and that was that the enormous aggregations of capital controlling these railroads, the consolidation of railroads, the community of interest, as he called it, was after a while going to put power over rates in the hands of some two or three men, and the result would be to increase rates above what would be reasonable and in the end to strangle commerce, and therefore somebody must have authority and power to interfere; not because he believed that condition now existed, not because the rates are too high—they are not too high—and Mr. Prouty said so here, but because of the evils that he fancies may hereafter exist if this sort of thing goes on.

Now, it seems to be perfectly clear, as shown by Commissioner Knapp's remarks, that the power to make rates has no sort of relation to the evil of discrimination or to the evil of the payment of rebates. How is it possible that a rate prescribed by legislation or by Congress directly should have any more sanction or be any more inviolate than one established by the railroads themselves? The sanction of the rates is just the same. The rate fixed by the railroad in itself operates as and is just as much a part of the law, and just as obligatory upon the railroads, as though it was fixed by Congress. And it is just as easy to give secret concessions from published rates or to pay rebates in one

case as it is in the other, so that the method of fixing the rates has no application to the rebates.

Has it any discriminations?

It has reference to the discriminations only where the making of a rate would go so far as to touch the discrimination itself.

Now, what is the discrimination? It may be, of course, between individuals engaged in the same trade on the same railroad, in the same trade but upon different railroads, or between enterprises engaged in a like trade on the same railroad, or it may be between markets, either the sources of supply or the points of distribution. Therefore no legislation, no fixing of rates, can touch the matter of discrimination unless it involves the whole field and the fixing of differentials. You have got to consider the whole subject of the classification of rates and the relation of rates and of communities and markets in order to touch that question. So that the making of a rate in a specific case to meet a particular complaint has no reference whatever to the general question of discriminations which Mr. Knapp and Mr. Prouty say is such a crying evil.

By the way, while I think of it, I beg to commend to the committee a pamphlet written by Mr. Nimmo, which is a review of the Eleventh Annual Report of the Interstate Commerce Commission, and is a most interesting and valuable contribution to the literature of this whole subject, and unless the committee has it already furnished to them I will make it my business to have copies furnished.

Now, gentlemen, as to the question of how railroad rates are made. No schedule of rates was ever made by any railroad manager as a new matter at the beginning. They were based on and determined by the charges for other means of transportation—by team, canal, or what other method of transportation there was existing before the railroads, and they have gradually been changed and revised as became necessary to meet changes in conditions, not only the conditions of cost to the carrier, but also the conditions under which producers have competed with each other, and the springing up of new industries in different parts of the country, and the discovery of new inventions. Tariffs have been revised from time to time, and changes in classification have been made, particular rates put up and down to meet varying business conditions, but rates and classifications have never been made by any one arbitrarily.

The law of Iowa in 1888 erected a railroad commission and directed them to make a schedule of rates and classifications. Having first declared all these principles of the common law and having declared the long and short haul clause with great particularity in a way never used anywhere else, what did that commission do? Did it sit down and philosophically work out a schedule and classification for itself? By no means. It adopted the classification which the railroads themselves had made, and which had been in force for twenty-five years in the State, without changing one letter in it. It did not even have it reprinted, but it sent around to the railroads and got a lot of copies and brought them to its office and stamped them with a rubber stamp as the "Commissioners' classification." That is what that commission did. What did it do about rates? It took the Chicago, Burlington and Quincy schedule and the Rock Island schedule, and the others—they are all alike—and set a man down with pen and ink to figure out a horizontal cut in the rates; and if it had not been that there was one

very sane man on that commission, a very wise and prudent man, they would have done that. But Colonel Dye kept it within certain limits, and the result was they only planed off about 13 per cent; and that is as near making a new schedule as anybody ever came.

Mr. SHERMAN. I guess we had better get a search warrant out for that man.

The CHAIRMAN. The hour for the meeting of the House has arrived, and will it please you to go on to-morrow at half past 10?

Mr. BLYTHE. It will suit me very well indeed, thank you. Indeed, it will be a convenience to me, because I would like to get through to-morrow.

(Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, Wednesday, May 7, 1902, at 10.30 o'clock a. m.)

WEDNESDAY, *May 7, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. J. W. BLYTHE—Continued.

Mr. BLYTHE. Mr. Chairman and gentlemen, yesterday I stated that the making of rates had been a process of evolution; that it had been a growth, but the making of rates in itself is not the only thing. The apparent making of a rate between two localities on one railroad is not in itself the most important thing in the fixing of rates, but the question of differentials, the question of the relation of rates as between communities and between industries and between different commodities, is the most difficult as well as the most complex feature of rate making.

These differentials—the relation which the rates from one community bear to the other, and from the same point of origin, perhaps, to a third community, or between two communities like Chicago and Boston on the one side and St. Louis or Newport News or Baltimore upon the other side—add vastly to the complexity and the difficulty of the question. The rates have been adjusted by this slow process of growth from the beginning, with reference not only to the incidentals of a particular commodity being shipped between two points, but of that commodity with reference to other commodities in active competition with it for the same uses, not only between those points but from all points of origin to the markets which that commodity seeks.

To illustrate, I have before me a tariff of the Chicago, Milwaukee and St. Paul made jointly with the lines east of Chicago upon flour for export. The rate from Baltimore to Minneapolis and St. Paul is 17½ cents. That is the minimum rate to any seaboard point. The rate to Boston is 20½ cents, a difference there of 3 cents between Minneapolis and St. Paul to Baltimore on one hand and Boston on the other hand at the seaboard. Now, those relations must be preserved, and if not preserved must be departed from for the gravest reasons, reasons which are not only influential to the carrier itself, but which will command the approval of the community served, and of other carriers competing for the same business between the same points, or between rival and competitive points to those points.

The competition of markets, the competition of the sources of supply, and the competition of the markets, the points of consumption or distribution, are the material things which go into the making of rates, and so when a new enterprise is about to be started, if a new mill is to be built, if a new factory is to be put into operation, is to be constructed, whether it be a beet-sugar mill or a cotton factory or a drain-tile factory, or whatever it may be, the very first question which confronts the investor is, "What rates can I get from that point to the markets and territory in which I must sell my goods; will they be low enough to enable me to compete there on equal terms with other manufacturers producing the same articles at other points?"

So what does he do? He goes to the freight agent of the railroad or railroads which must serve him, perhaps only one, and perhaps several, and he says to them, "What can you do for me?" The freight agent says, "What is it necessary for me to do for you; what sort of competition have you to meet; what and where are your rivals in the production of this article," whatever it may be, "what are the competitive terms upon which you have got to get into the market?" And after a little while, by the process of negotiation, they ascertain what is the rate that that commodity must be subjected to in order to put the producer upon an equality with his competitors.

Now, perhaps the rate will be prohibitive, and if so the project will die right there, and perhaps a rate can be made with a just regard to the interest of the carrier and such that it will further and promote the industry. Usually the latter is the case, because the carrier is interested in promoting, to the extent of its ability, every industry that can be put upon its lines. In the building up of the regions served and of their industrial activities is to-day the most important part of a railway manager's duty, next, of course, to the maintenance of his property.

Now, this difficulty of the competition between the various sources of supply and the various markets which are sought, either of consumption or of distribution, is not purely theoretical, but has been fully recognized by the Commission from the very beginning. I wish to read an extract from the seventh annual report of the Commission:

To give each community the rightful benefits of location to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonably just to both shipper and carrier is a task of vast magnitude and importance.

They state there the vastness and magnitude of this undertaking. Then, to show that the Commission itself did not shrink from this undertaking, they add: "In the performance of that task lies the great and permanent work of public regulation."

That is what the Commission wants. It wants the power not only to say what the rates shall be upon products from Missouri, Iowa, and Illinois to the markets of the world, to regulate not only the domestic rates within the United States, but also to regulate the rates at which these products of the soil shall be exported; not only to say what the carrier shall charge, what differentials shall be between points on its own line, not only to prescribe the rates which may be excessive or extortionate in a particular case, but they undertake to say they are equal, to deciding what is necessary to give to each community the rightful benefits of its location, and to keep different commodities

upon an equal footing, so that each shall circulate freely and in natural volume.

Was any power such as this ever granted to or ever demanded by any tribunal except this? Mr. Nimmo, in his remarks before this committee, spoke of this as an autocratic power, and said the Commission, if granted this, would be an autocratic body. Did his statement go too far?

Of course I do not say this offensively, for even the most upright, honorable, patriotic, and able men would not be competent to exercise such universal power as this. That an irresponsible body, extra-constitutional, not erected within the constitutional limits, not responsible to any department of government, should possess such power as this would transcend, I verily believe, anything in the history of the Anglo-Saxon people.

The magnitude of this task is such that to-day there are thousands of men actively engaged in dealing with it. Every railroad in this country has a large staff of trained, expert men. Mr. Bird testified that he had been in the railway service, I think, for thirty-five years; beginning as a night watchman he has served through all the grades of the service. Mr. Bird is not an exception. Every railroad in this country has a man, not perhaps the equal, not perhaps of so long an experience as Mr. Bird, but similarly educated and similarly charged with the duty of superintending and looking after this rate problem as it affects the local conditions of that particular road. It is not done perfectly; it is done subject to the limitations of human nature, but it is not done arbitrarily. There is no such arbitrary power lodged to-day in the hands of the railroad companies, or in the hands of the men engaged in the superintendence of traffic, as this bill contemplates, because, as I have tried to show, the adjustment of every differential, every difference of rates, and every relation of localities to each other, and the commodities to each other, has not been due to the voluntary and specific exercise of any will or any judgment, but it has been by the slow higgling in the market, extending over forty years.

Is this to be disturbed and to be brushed aside by the arbitrary judgment, or, if you please, the informed and patriotic judgment—I do not want to use offensive language, let it be the judgment of the best and most informed men—of three or five men substituted for what, after all, is the agreement of the minds of all the interests in the country upon what these rates shall be? What has been the result of this power? Take the Eau Claire lumber-rate case. In the Eau Claire lumber-rate case, what did the Commission attempt to do? They attempted to say that the Eau Claire rate should bear certain relations to the rate from La Crosse and other points at which different relative rates had for a long time been maintained, which had been established through a long process of negotiation and disinterested arbitration to which all the parties had consented.

What was the result? The St. Paul Railway Company decided, as Mr. Bird testified, to accept the ruling of the Commission. It was to its interest to accept it; to its interest because it was interested at Eau Claire, and in a less degree at La Crosse and Winona, and therefore its interest was to conform to the judgment of the Commission. It did conform, and what was the result? A condition of chaos throughout all that region, and the practical impossibility was demonstrated of carrying out the award of the Commission in that case, and

the former relation of rates was restored. And the Commission, by the way, never attempted to secure any judicial sanction of its order changing that relation. And the relation exists to-day as it did before under the Bogue award, substantially. Now, there was another case. What did the Commission attempt to do there? I refer to the case of the differential—the Chicago freight bureau case. It is what is called the maximum rate case (reported in 167 U. S.). Certain differentials prevailed from Chicago to the southern points—Atlanta, Augusta, Social Circle were the primary points named in the investigation, but it involved a very large region in the South. Differentials had been established and maintained from Chicago and Cincinnati on the other hand, and the region south of the Ohio River. They had grown up and had been evolved by a long experience, and had been acquiesced in not only by the rival carriers, but for the most part by all communities and individuals interested.

But that was not all. All the Atlantic coast and all New England was competing for the same business, and long experience had shown that certain differentials should be maintained, so that not only the carriers might have a margin of profit, but also that the communities served should prosper. There was very little complaint. There was no complaint in New England, and none from Chicago, and none from Cincinnati, except that the freight bureaus of those places were complaining a little because they were trying to get an advantage over each other, as in the La Crosse and Eau Claire case; but there was no substantial complaint from the people. The complaint came from the South, from Social Circle. That was its origin. The Commission undertook to make an order there changing the differentials which had been for years in effect. But the Supreme Court said they had attempted something they had no power to do, and of course the judgment of the Supreme Court in that case is the gravamen of the complaint to-day; it is the burden of the cry coming up to this committee that the Commission must be given more power.

I cite these cases to illustrate the kind of power that the Commission asks. If it were possible to give the Commission the power to fix the rate in a particular case, after a particular investigation from which it should appear that a rate was so obviously extortionate that it should be corrected, this would not be such an enormous task. It would not be so full of menace for the future. Its presage of turning everything upside down would not be so apparent. But that is impossible. These roads are all involved and the rates are all involved; not only the rates upon the particular railroad, but the rates on one railroad affect necessarily and involve the rates upon a railroad hundreds of miles away.

For example, the rates upon the Great Northern Railroad carrying wheat into all the markets, primarily into Minneapolis, St. Paul, Milwaukee, and Chicago, but ultimately into all the markets east of there, must bear a certain relation to the rates charged by the Santa Fe Railroad, 500 miles away, carrying wheat from Kansas and the Indian Territory and Oklahoma to the same markets. These rates are all necessarily dependent upon one another, and all have been established by a long series of considerations and a long experience. I can not dwell too much upon that, that they have been established by a long process of experience and evolution, and they have been adjusted so as to bring about a relation between widely separated sections of the

country and markets which must necessarily compete for the consumption or the distribution of products.

Such a task as this can be satisfactorily worked out only by the methods which have heretofore obtained—the free competition of the carriers, of the producers, and the open markets. Even so, it has not been perfectly done; that is, absolute mathematical justice has not always been attained. But there has been as near an approach to exact justice as ever is attained. Indeed, I do not suppose that there is any business in the world that is conducted relatively to its importance and its magnitude as fairly, where there is as little friction, where there is as little just cause of complaint, as in this business of the carrying trade. I think it is not without the knowledge, perhaps, of the chairman of this committee, that through all the vast region in southern Iowa and Nebraska, with which he is very familiar, there is absolutely no complaint to-day of the service or the rate charged by the railroads serving that country from the producers of the country.

A few years ago the conditions were very different. There was an excited public opinion growing out of causes, some of which were imaginary and some of which were real and some of which were like other phenomena produced by the hot winds blowing up from Kansas; but that has all disappeared. We have no trouble and no litigation in that country to speak of; we have no litigation with the producers and only a little with middlemen. But except for middlemen the whole country is quiet on this subject of freight rates, and not a complaint has been made to this committee, and, as I believe, not a single complaint has been made to the Interstate Commerce Commission of extortionate rates or discriminations.

Mr. STEWART. Is not that due to the fact of the producers not having any immediate connection with the railroad companies he deals with the middlemen?

Mr. BLYTHE. He deals to some extent with the middlemen, but I believe there is no sentiment which is expressed so quickly as a sentiment of injustice on the part of the producers of the land. It is reflected at once in political agitation. If there is a discontent, if there is a grievance, if there is really anything to be complained of on the part of the people it is at once reflected in political discontent, and a few years ago a wave of agrarianism passed over the West, resulting in the Potter law in Wisconsin and the maximum rate law in Iowa and similar legislation in many of the States.

Mr. STEWART. Tending to correct—intended to correct—those evils.

Mr. BLYTHE. That political agitation has all disappeared. There is nothing left of it. If there were a grievance, if there were faults to be found, it would be reflected to-day in the politics of that country just as it has been in the past, and just as other evils affecting the producers are reflected in the politics of that region to-day.

In the making of rates there are a great many elements, of course, to be borne in mind. Not the least of those is the cost of carriage to the carrier. That exact and careful computations of cost are ever now made with reference to a particular commodity occurs only in those cases where new industries are to be erected, or where commodities, for one reason or another, must seek a very low rate. For example, the promoters of the "good-roads movement" asked the railroads to make low rates upon road material, which the railroads were glad to do, but when the traffic managers investigated it they

found that any rate was prohibitive which would meet the cost to the railroads, and temporarily, of course, the thing had to be abandoned.

It is obvious, however, that there is a limit below which no carrier can undertake to carry a commodity; there is a limit below which it is prohibitive upon the carrier, just as on the other side there is a rate prohibitive upon the shipper. Between those limits the rate is to be established, and not only with reference to the necessities of the shipper in a particular case, but also with reference to his interest as related to the others in the same trade and dealing in commodities for the same market. I think that the more the nature of what the rate is, the nature of railroad rates and the way they are established is understood, the way they are made, their necessary relation, not only to rates upon the same commodity in other parts of the country, but relative to related commodities, and the necessity of maintaining just differentials between the different communities, it will be seen that the Commission is not and will not be able to sustain the magnitude of this labor.

The Commission itself, however, indicates that it would only exceptionally be called upon to perform this duty. If that is true, it would seem that the evil complained of is not so very great, and, indeed, I wish to emphasize again that the Commission has pointed out no reason why the rate-making power should be conferred upon them except that which was pointed out by Commissioner Prouty when he pointed out that the danger was not a present danger, but a danger arising from the consolidation of interests, and a danger for the future.

Now, Mr. Chairman, it is important, I think, to examine for a moment whether it is at all probable that the consolidation of railroad interests will of itself subject the country to any danger that rates will be made extortionate. In the first place, as a railroad company can raise its rates it must decide what the effect of that must be on its own traffic.

A very slight advance in the rates upon corn will leave the corn in the crib, or will burn it for domestic uses all over the State of Nebraska. The chairman of this committee has known of years when the corn crop of Nebraska could not be moved at all, because the demand for corn was so small that corn could not be profitably transported even from central Iowa to the seaboard. Repeatedly it has been true that the railroads have had to temporarily reduce their rates below the cost to them of hauling, in order to get corn out from Nebraska, and haul coal in at a low rate, to induce the farmers not to burn corn rather than ship it. Why? What was the interest of the railroad companies to do that?

The same reason that to-day will impel a manufacturer in this country to pursue his trade in Great Britain or Germany in respect of some manufactured commodity when he sells at a loss over there. He can not afford to give up his market; he can not afford to lose his trade. The railroads can not afford to have their country depopulated. All the railroads of the West were building up the region, especially the region west of the Mississippi River; for forty years that was their great work.

THE CHAIRMAN. Is it not true that the Burlington Railroad in Iowa was operated for nineteen years before a dividend was issued?

MR. BLYTHE. I think for more than nineteen years; I can not give the exact number of years, but it was operated for a great many years before a dividend was declared. The construction of the Burlington

road was begun west of Burlington in 1854. There was no dividend upon the stock of that company. That was completed through to the river, I think, in 1868; you will be perhaps able to correct me on that, Mr. Chairman——

The CHAIRMAN. 1869.

Mr. BLYTHE. 1868 or 1869. It was then completed to the Missouri River. There was never a dividend upon that property until after 1871. The stock of the Burlington road sold at about 26 cents at sheriff's sale, and there were no buyers for it, in 1870 or in 1869. It was sold then to Eastern purchasers. I said there were no purchasers; I mean there was no competition; nobody wanted it at 26 cents.

Mr. STEWART. What is the stock worth now?

Mr. BLYTHE. The last sale was 200; all sold in a bunch.

Mr. RICHARDSON. Does it not occur that the value of railroad stock is frequently depressed, not so much by the lack of earnings by the road, as from other circumstances; for instance, the issuance of bonds?

Mr. BLYTHE. It went to the Missouri River. It was afterwards sold to the Chicago, Burlington and Quincy; there were no circumstances to depress that stock except that it could not earn any money. It was a cheap railroad.

Mr. RICHARDSON. But does it not occur sometimes?

Mr. BLYTHE. Undoubtedly it does; undoubtedly. There are a great many mistakes made in financing railroads.

Mr. STEWART. If you had not extended the system to the Missouri River, would not the stock have remained at the same low figure?

Mr. BLYTHE. I do not know. The extension was like railroad rates; it was enforced; it was compelled, and we were driven to it.

Mr. STEWART. And the reason of the depression of the stock was that the facilities were not what they should be.

Mr. BLYTHE. There was nothing in that country. The reason stock was low was that nobody lived in that country; it was a wilderness; it had to be improved; it had to be peopled; it had to be built up. There was nothing there but a few roving herds of cattle when your chairman first knew it.

Mr. TOMPKINS. And buffalos?

Mr. BLYTHE. Not any buffalos quite as late as that, but there had been a short time before that.

Mr. STEWART. The stockholders did not lose anything eventually?

Mr. BLYTHE. The original stockholders lost pretty nearly everything they put in.

Mr. RICHARDSON. Is that not generally the case?

Mr. BLYTHE. Very frequently.

Mr. RICHARDSON (continuing). That the stockholders are the people who suffer through consolidations and purchases that are made taking a road out of their hands, other people realizing the benefit?

Mr. BLYTHE. Very often so; not always. Take the Chicago, Burlington and Quincy Railroad. The Boston interests bought in the Chicago, Burlington and Quincy when it was a little disjoined road. They held on to their interests. They finally bought the road in Iowa. The Iowa people went over to the Boston people who represented the Chicago, Burlington and Quincy and interested them in building the road on. The Boston people held on to their interest, and they made a great deal of money out of it. There was very little

change in the Burlington ownership except from the expansion of its capital as the improvement and management of the railroad went on.

Now, gentlemen, on this subject of consolidation, the first question that a consolidated railroad meets is How can we increase our tonnage; how can we increase business? Because it must be remembered that every concern that is rich enough to absorb a lot of other railroads has credit enough, has means enough, to make the kind of railroad it needs and furnish the kind of equipment it needs. Every car of a railroad is in constant and active competition with every other car of the same railroad, because it is obvious that a railroad company can better afford to haul two cars at \$10 profit than to haul one car at \$7 profit. Every part of the railroad is in active competition all the time with every other part of the railroad, and every unit of its transportation facilities is in active competition with every other unit. That, perhaps, is not economic language, but it is language that can convey my idea better than if I attempted to put it in more exact form.

The competition of the railroad itself, the necessity under which it lies to do the utmost possible at the lowest cost—that is, at the rate which will promote the business most—is so urgent all the time that that is the one thing to which it will devote its energies.

It appears in the suits against the Northern Securities Company and others that the rates have been reduced since that company acquired the Northern Pacific and the Great Northern railroads; it appears affirmatively in the answers which they have just filed that reductions have been made in the rates which, upon the same volume of business, would decrease the earnings of each of those companies about \$1,000,000 annually.

Mr. RICHARDSON. Do you not think the tendency of the consolidation of the railroads of the country looks to finally presenting the question of Government ownership?

Mr. BLYTHE. That is a very large economic question, Mr. Richardson.

Mr. RICHARDSON. Is not the tendency of the country now toward consolidation?

Mr. BLYTHE. I think so; yes, sir.

Mr. RICHARDSON. And is not that bringing forward the question of Government ownership more prominently?

Mr. BLYTHE. I think so.

Mr. RICHARDSON. There is no medium ground, is there? It must either be governmental ownership or the railroads controlling themselves?

Mr. BLYTHE. Logically, as I said yesterday, I believe there is no middle ground between absolute commercial freedom to the railroad and governmental ownership, if the interests of the carriers are to be preserved as well as those of the competing communities. When I say commercial freedom I am not speaking of police regulations, I am not speaking of the regulations which are known at the common law, and which are properly enforced, these restrictions that have grown up with our Anglo-Saxon jurisprudence, but of commercial freedom and Government ownership. There may be all sorts of police regulations, there may be all sorts of remedial regulations, all sorts of agencies interposed to prevent extortionate rates, and secret rebates, and all those things which the common law prohibits; but, commercially I believe there must be absolute freedom.

Mr. RICHARDSON. Then, do you believe the consolidation of railroads tends to the interests of the commercial public?

Mr. BLYTHE. Let me take a case for purposes of illustration. What is now known as the Chicago, Burlington and Quincy Railroad is a railroad made up of the consolidation of more than 60 separate corporations. Some of them, it is true, were formed for the purpose of building extensions; most of them, however, were independent. Many of them, at least, were formed as independent organizations with no idea, either on part of the promoters or the Chicago, Burlington and Quincy Company, that they would ever be consolidated or united in interest. The Chicago, Burlington and Quincy, to sketch it briefly, was built from Chicago to Aurora. The Central Military Track Railroad began at Aurora and extended to Galesburg. They were independent; they were operated independently. The Burlington began at Peoria and went to Galesburg and Monmouth and to the Mississippi River and over to Burlington, and that was operated independently.

Finally the legislature of Illinois authorized the consolidation of those three lines, and they were put together. That was then the Chicago, Burlington and Quincy Railroad. Afterwards it bought the Iowa property and extended it through to the river. Afterwards it acquired the Burlington and Missouri River Railroad in Nebraska. That was not until 1878, I think. Am I right, Mr. Manderson?

Mr. MANDERSON. Yes.

Mr. BLYTHE. In 1873 it acquired the Iowa property, in 1878 the Nebraska property. Later, in 1880, it acquired a railroad running from Council Bluffs to Kansas City. In 1883 it acquired the Hannibal and St. Joe. All of these railroads were independent, and not only independent but properties which at one time or another had belonged to rival concerns.

What has the effect of that been upon the country? There is not an inhabitant of that country who will not be a willing witness to the fact that those consolidations have promoted the interests of the country in every way. They have resulted in lower rates, better service, in more facilities of every sort to the communities which they attempt to serve, through service, facilities of a great many kinds which are impossible on small and disjointed railroads. What has occurred with sixty corporations I do not think will fail to be repeated with the experience of railroad consolidation when we unite three other great concerns like the Great Northern, the Northern Pacific, and the Chicago, Burlington and Quincy into one. The effect will be to reduce rates. It can not help but do that, in my opinion, because the very purpose of this purchase by the Northern roads was to give them entrance over their own rails, or friendly rails, into communities which they did not already serve.

Mr. RICHARDSON. What becomes of competition?

Mr. BLYTHE. It is competition within itself. It is the necessity for doing the greatest possible volume of business that will contribute any profit—the necessity for making the utmost use of every part of the railroad—of keeping cars and engines and stations and the railway itself in the most active possible use.

Then there is another very active competition, you must remember—the competition of rival producers and rival markets. Take the lumber business. I live in a country which has no timber to speak of, the

same as you do, Mr. Chairman. We get our timber from various sources of supply. The white pine comes from Minnesota and a little still comes from Wisconsin. Hard wood, hemlock, and spruce come from Wisconsin and Michigan; yellow pine comes from the South, with various other kinds of timber, and hard wood from Missouri and Arkansas, and from the Northwest come substantially all of our shingles and a lot of other lumber from that region, in direct and in constant competition with lumber suitable for the same purpose, although not identical, coming from these other regions.

For example, the fir and the spruce of the Northwest come by the Billings route, over the Northern Pacific, and are distributed over Kansas and Nebraska and western Iowa in competition with hemlock and another kind of spruce from Wisconsin and Michigan, not carried in by the same railroad.

If Northwestern lumber, lumber from Puget Sound, and lumber from Nevada and from Montana is to be brought into Kansas and western Iowa, it must be brought there in competition with lumber from the South, and that lumber from Wisconsin brought in by the Chicago, Milwaukee and St. Paul Railroad and other rival railroads in active competition with them, and in the direst and fiercest competition all the time; and not only the competition of the railroads, but the competition in these regions supplying this lumber and all the men engaged in that trade.

What is true of lumber is true of everything else. It is true of iron ore and everything that is brought into that country for use. We are trying to build up all through the Mississippi Valley now a lot of industries.

Everybody is intent upon that. The railroad people and the people living in these communities are intent upon it. We have cheap coal in Iowa, Illinois, and Missouri, and they are trying to bring iron in, trying to bring hard wood in, trying to make plows and furniture and all sorts of things that come into daily use by the people of that region. Now, where do those materials come from? Hard wood comes from Michigan and from Arkansas. Iron may come from Alabama and it may come from Lake Superior. Who is going to carry it? The man who can carry it cheapest. The man who can lay it down to the manufacturer or consumer cheapest will bring it in.

There is no fear that competition in this country will cease, because, even if these five gentlemen who are held up here as a bugaboo by the Interstate Commerce Commission should sit down in New York and agree that rates from Alabama and Arkansas and Michigan and everywhere else should be the same on these things, the moment that they put those rates up the pressure will be felt by some manufacturer, some series of manufacturers, some set of communities somewhere else in the country that they serve, and there will be death where it is necessary for the railroad companies that there should be life and activity. Business will fall off, and these five gentlemen sitting around that table in Wall street who are going to fix the rates on these roads will not let business fall off very long. If it is necessary to make a cut of a cent, or a half cent, or two cents, or three cents, upon a rate, you need not be afraid of that, because the one thing they want is to make money on their investments.

Mr. COOMBS. Does not your argument tend to this: That the Commission is somewhat useless in regulating affairs?

Mr. BLYTHE. Do I take that position?

Mr. COOMBS. Is not that the theory of your position?

Mr. BLYTHE. Oh, by no means. I should very much deprecate any inference of that sort from anything I have said. I have tried to state that while I believe in absolute commercial freedom of these railroads—I believe that was the policy of the law in the origin, and I believe it is the policy of the law to-day, and I believe it is necessary if we are to get the best results—yet I do believe all those restraints which the common law has thrown around this business, all the prohibitions which the common law imposes upon carriers are wise and beneficent; and even if they were not wise and beneficent as original matters they have become ingrained in our Anglo-Saxon temperament and they ought not to be repealed, and they never will be repealed.

Those things are in the interstate-commerce law. The Commission is charged with doing everything it can. It is charged with giving a most vigilant scrutiny to all of the relations of the railroads to the people, with a view of seeing that those provisions in the act to regulate commerce are obeyed.

Mr. COOMBS. The reason I interrupted you was this—

Mr. BLYTHE. Excuse me a moment, for I wish to add something. I think that that is the most useful and most valuable function of the Commission, and one which it is qualified to perform and one which it has performed very well.

Mr. COOMBS. I want to bring you back and ask you from a railroad standpoint what you consider the particular utility of the Commission. We have not had a clear statement with reference to that.

Mr. BLYTHE. Not from anybody?

Mr. COOMBS. Well, I have not taken it so. I may have misjudged the language.

Mr. BLYTHE. That is a very difficult and very embarrassing question.

Mr. COOMBS. That is the reason I ask it.

Mr. BLYTHE. Because if I were to be entirely truthful and candid, which I always want to be, if I say anything, I should have to say that I believe that the Commission itself has entirely misconceived the purpose for which it was created.

Mr. COOMBS. I would like to hear you on that.

Mr. BLYTHE. That Commission for several years has been looking after power, forgetful of the fact that it was not any part of any of the constitutionally recognized departments of our Government. It is a bureau located outside of the Constitution, and charged only with the duty of reporting to Congress what it finds to be the facts with reference to the relations between the railroads of the country and the public.

Now, if the Commission had confined itself to examinations into violations of the law, to calling those violations to the attention of public officers charged with their redress or their punishment, as the case might be, to advising with a view to healing differences (and that part of the work it has done with some success, and, I must say, with a great deal of care), I think it might have done a great work. But the Commission has been misled by this desire for a power which Congress never intended it should have, and which it is very doubtful if Congress could give it if it tried.

I do not know that I have met your question, Mr. Coombs, but if not I shall be very glad if you will indicate what further you desire.

Mr. COOMBS. Taking that statement in connection with what you have said before with reference to the powers of the Commission, I think you probably have stated your position all right, if I understand your position.

Mr. BLYTHE. I believe, in other words, that the Commission may exercise advisory functions; that it should inquire into the relations of the railroads to the public; that it should report to competent authority any violations which it may find in discriminations, in extortions, anything which is out of joint; that it may make recommendations; that it may act as a medium of negotiations between parties whose relations are so strained that they can no longer negotiate between themselves, if there are any such instances I do not know of any, I have not heard of any myself, but I read in the statement of one of the Commissioners before this committee that they had letters on file from people saying that they did not want their names to be disclosed, for they were afraid they could not get along well with the railroads.

If there are such cases the Commission ought to act upon them. I never heard of such cases myself in twenty-five years' experience. I do not believe that in our country any such cases exist on the part of men who are really competent to do business.

I wish to add one word upon a subject which I discussed yesterday, and that is the extent to which this power to make rates could be revised by the Federal judiciary if conferred upon the Commission.

The Supreme Court, in the Maximum Rate case, decided that the determinations of whether an existing rate, with reference to the existing circumstance was reasonable or not, was a judicial question; that with the determination of that question the judicial power ceased, the determination of the reasonableness of the rate, of the appropriate rate, or fixing a rate for the future was a legislative question purely.

Now, the Commission desires to have the power to make rates for the future, to make rates, as I have said before, involving not only the specific power to make rates, but all that goes with it, of fixing differentials, fixing relations between communities and between individuals, and they profess the willingness that there may be an appeal from their orders in this particular to the judiciary.

Now, if the committee please, I wish to call attention to this point particularly. That so far as a review of the court of their power to fix rates for the future, or any order that they make for the future, is concerned, the court is absolutely powerless to act. The court will be empowered only, under the Constitution, to inquire into the reasonableness of these rates with respect to the particular transactions that have already occurred, with respect to circumstances as they exist at the time, and the courts will not be competent to and they will not assume the jurisdiction unless they modify the rule which the court has itself laid down in the maximum-rate case of deciding whether or not the rate fixed for the future is or is not a reasonable rate.

Mr. ADAMSON. You do not think that an appeal will lie from a legislature to a court?

Mr. BLYTHE. I do not. I think you have stated it very well. If this Congress should attempt to furnish the power that is outlined in this bill, either in this exact form or in some correlative form, I do not think it would be held to be a constitutional exercise of the legislative power.

Mr. ADAMSON. The courts could only construe it back and determine its constitutionality?

Mr. BLYTHE. With reference to conditions as they are at the moment, with reference to the particular case, because—

Mr. ADAMSON. I speak of legislation as to the future.

Mr. BLYTHE. I call attention to the fact that the Federal judiciary has never held any act to be unconstitutional and void except with reference to the facts in the particular case.

Mr. ADAMSON. When you get to a proper point I would like to ask you a question.

Mr. BLYTHE. I was about to say that I believe I have about concluded what I have to say as original matter.

Mr. ADAMSON. In view of what you have said on various phases of the matter, are the geographical or commercial conditions such, or likely to be such, as to lead us ever to hope for anything like uniformity or equality of rates and management through all parts of this Union, even under a Government management?

Mr. BLYTHE. I think a Government management would be the very worst thing that could happen. I believe Government management would mean chaos.

Mr. ADAMSON. Do you think it is possible under any management?

Mr. BLYTHE. I think there will be a gradual approach toward an ideal state, although, of course, it will not reach an ideal state. There will not be perfection in any enterprise that is not an exact science; but there will be an approach to it.

Mr. ADAMSON. Is there not grave danger that under a central management of the Government injustice might be done, whether intentionally or not, to the railroads and cities in one portion of the Union at the expense of the railroads and cities in other portions of the Union?

Mr. BLYTHE. Not only a grave danger, but I believe it is inevitable. There may not, in my opinion, be any remedy for it, but it certainly is unjust on any logical grounds to carry a letter from Washington to San Francisco for the same charge made to carry it from the Raleigh Hotel to the Willard Hotel.

Mr. ADAMSON. And if we should go to the extreme of Government ownership, and the whole subject of railroad management and the army of railroad officials and employees should become an army of partisan conduct, would not that be a very undesirable state of affairs, to say the least?

Mr. BLYTHE. That is a very large political field. My own view is such that no evil can be painted that I think would be an exaggeration of the results of that sort of thing.

The CHAIRMAN. It is difficult to apportion exact justice to all parts of the country, as we see in the river and harbor bill.

Mr. BLYTHE. I think we are substantially agreed on the evils of Government ownership.

Mr. ADAMSON. Supposing Judge Richardson's idea of the gradual approach to a condition where the railroads can be turned over to the Government to be true, I suppose the railroads would be alert to have their stocks in such shape as to turn them over to the Government when the time comes at a liberal price.

Mr. BLYTHE. I think you can say that when the time comes the railroads will get all they can for their property.

Mr. ADAMSON. That is all I wish to ask.

Mr. BLYTHE. If there is nothing further, I will thank the committee for its kindness and attention to me. I am requested to state that Mr. Bird wishes me to call the attention of the committee to the fact that the rates upon export flour from Minneapolis and St. Paul to the seaboard have been adjusted by a recent tariff so as to be the same as upon wheat for export.

Mr. COOMBS. The same a pound?

Mr. BLYTHE. Per unit, per hundred pounds.

Mr. COOMBS. And there is no differential at all?

Mr. BLYTHE. There is no differential as between wheat and flour for export from Minneapolis and St. Paul to the seaboard.

The CHAIRMAN. Is there any other gentleman, Senator Faulkner, whom you wish to be heard this morning?

Mr. FAULKNER. I desire to say that I had anticipated and hoped to have a gentleman here from Chicago to present the question somewhat on the line that Mr. Blythe has presented it, next Friday. He said it would not be possible to get here before then, and I am now somewhat in doubt, from a telegram since received, whether it will be possible for him to be here then, or whether he will be able to come at all. At this time I anticipate he will be able to get here Friday, and I understand that there will be a meeting on Friday.

The CHAIRMAN. There is a delegation which desires to be heard on Friday on another branch of the subject; but the committee can hear the gentleman Senator Faulkner refers to on Saturday.

Mr. FAULKNER. I will communicate with him at once and will notify you, Mr. Chairman, whether or not he will be here. If not, there is no other person at this time that will come before the committee.

The CHAIRMAN. You can let us know on Friday.

Mr. FAULKNER. Very well, sir.

Thereupon (at 11.35 o'clock), the committee adjourned until Friday, May 9, 1902, at 10.30 o'clock a. m.)

FRIDAY, *May 9, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. JESSE LAWSON.

Mr. LAWSON. Mr. Chairman, we feel that we have a cause to present to you. We would not come, knowing how you are engaged on matters of the greatest importance to this nation, unless we believed that our cause warranted our coming and warranted the taking of your time. We are citizens of this Republic. From the time of the Revolution to the present day no class of people has given its blood more freely for the preservation of this country and its flag than the colored people. In this country we occupy a peculiar position. We are about 9,000,000, one-eighth of the entire population. We have done everything that we could to make ourselves useful and desirable citizens.

To our minds, according to our opportunities and the abilities that we have had, we have done everything to fulfill all of the conditions of civilization; and yet year by year, day by day, prejudice seems

to be growing stronger against us, and we regret to say that our friends seem not to be aware of the fact that we need their hand and their protection. Here in the District of Columbia, on a reservation owned by the United States Government, on the Mall here in this District, within half a mile of the White House, within half a mile of this Capitol, the badge of inferiority is fixed upon certain people coming into this District on this reservation by the railroads bringing in and loading and unloading its passengers. We believe that the sentiment of justice and fair play is still in the bosom of the American people, and we believe that the people not only in the North, but the people in the South, if the case is properly presented to them, and if they can see the injustice of the matter, if they can see what they are doing against American citizens, I believe that even those people will be persuaded to believe that they are in the wrong, and that we ought to have justice accorded to us.

But there is another question, and a very grave one, that presents itself to us just at this time. Please remember, Mr. Chairman, that our friends are in control of this Government. We remember that every branch of the Government, the legislative, the judicial, and the executive, every branch, I say, is controlled by the party known as the friends of the colored people. And yet all of these outrages are permitted against us; every badge of degradation is permitted against us, and no hand is raised and no voice is lifted up to put these things down.

Feeling as we do about the matter, through the kindness of Mr. Morrell, of Philadelphia, we had a bill offered to prevent the separating of passengers upon railroad coaches, and upon the steamboats, on the highways and the water courses on account of race and color. That bill the people are deeply interested in throughout this country.

Petitions have come to you from all parts of the country praying for the passage of that bill, and we believe that under the circumstances and under the laws of this country you have full and ample power to pass such a measure as that to prevent discrimination on account of race and color in public travel. I believe, sir, under the Constitution, it is the first article, section 8, clause 3, where the power of Congress to regulate commerce between the States is prescribed, and under the fourteenth amendment in the first clause, it has power to regulate traffic between the States, and we believe that the interstate commerce act ought to be so amended that the Interstate Commerce Commission should have power to enforce that provision by instituting proceedings at once upon any infraction of the act, and we propose to offer this measure this morning for your consideration. Something else may be put into this, but this is as a basis:

That the rights, privileges, and immunities of passengers traveling on or by any mode of conveyance engaged in interstate communication or commerce, whether on land or water, shall not be abridged or denied the full, untrammelled enjoyment of all the rights, privileges, or immunities or facilities afforded passengers on such conveyances engaged in interstate commerce or communication on account of race, color, or previous condition of servitude of said passenger or passengers, are made the subject of rule, regulation, or instruction to agents or others acting in behalf of any individual or corporation engaged in conveying passengers, whether by land or water, from one State to another; and the rights and privileges of passengers hereunder shall be the same, both inclusive and exclusive.

And every officer or agent of any corporation engaged in interstate commerce or communication shall be entitled to plead this provision and in arrest in bar of any proceedings in any court, taken under color of any law or regulation in conflict here-

with. And any person or persons having a ticket or proffering the regular fare shall be entitled to transportation either by land or water, and shall receive the same treatment, and be afforded identical facilities and accommodations as are furnished or afforded all other passengers of the same class, and without discrimination.

And it shall be the duty of the Interstate Commerce Commission to take the cognizance of and institute proceedings for each and every infraction of all or any of the foregoing provisions, and the party or parties found guilty of the violation thereof shall pay a fine of not less than five hundred dollars, or not to exceed five thousand dollars, and be imprisoned for not less than one year, nor more than six, or both in the discretion of the court.

This we offer for your consideration in amendment of the interstate-commerce law.

Hon. George H. White, who was formerly a member of Congress, will now have something to say in regard to the matter.

STATEMENT OF HON. GEORGE H. WHITE.

Mr. WHITE. Mr. Chairman and gentlemen, I regret exceedingly that an engagement in my office prevented me from being here promptly upon the opening of this session. I do not know the full extent of Mr. Lawson's remarks, but it strikes me that he has covered all the points we intended to present to you.

I am not unmindful of the fact that there is a law now on the statute books that would seem to prevent a discrimination not only in the transportation of commerce where the traffic is between the States or between this and a foreign country, but also in the travel or transfer of passengers going from one State to another; but I take it that most of you gentlemen are lawyers, and if you are not it is a matter of common learning that the Supreme Court has passed upon the existing laws repeatedly, and that as to a matter of this kind now that is res adjudicata that the court has held repeatedly, in several cases, that there shall not be discriminations under existing law where the passenger has a ticket from one State to another, continuous travel; but it has also held in the same decisions that where the railroad or other common carriers furnish accommodations that they may draw the line and have separate cars for the transfer of their passengers, placing colored passengers in one car and the whites in another. And I want to have you understand that we seek no special equality, but we seek simple, unalloyed justice.

It is a matter known to us all, and especially to all of you gentlemen who live or travel in the Southern States, where the bulk of our people live, that this equal accommodation is never granted to us. The cars that are set apart for the colored people, even for first-class travel, in all of the Southern States, and I have been in nearly all of them, are not equal to the second or third-rate smoking-car on other roads. There are carpeted floors, cushioned seats, no smoking, no indecent persons allowed in the first-class cars prepared for the white people. As an offset, we are put into a sort of "jim-crow" arrangement, where the train hands and engineers and brakemen, greasy from their common avocation, when they have to travel are granted the privilege of riding in this colored car, and where smoking and loud, profane, vulgar language is permitted, and that is found on the cars where the most refined ladies and gentlemen of our race have to travel. So that we have not equal accommodation, and the court has held, under existing law, that if that is accorded us we have no right to grumble, and the spirit of the law is complied with.

Why not, you say, then refer to the court for redress on the denial by the railroad corporations, who do not afford this equal accommodation according to the decision of the Supreme Court? I am moved, almost, Mr. Chairman, though this is a serious matter, to repeat a yarn that I heard once of William Loyd Garrison, who was asked once if he was not Garrison and he said he was, and a preacher asked him why he did not go into some place and preach his abolition, and the report was, "Why don't you, then, go to hell and comfort sinners?"

It is a crude illustration, but it is known to us who live there; it is known to me who have been in the courts of the State as a practitioner of the law for twenty-three years, that we have no redress—absolutely no redress—in the courts, where it is a matter between the races, and especially on account of such discriminations we have absolutely no redress in the courts.

Mr. RICHARDSON. What courts have you practiced in in the South?

Mr. WHITE. All the courts of North Carolina for twenty-three years, and in the United States district court of North Carolina, and in the courts of New York, in the courts of the United States, including the Supreme Court of the United States. I speak from a knowledge of my own observation. It is not a matter of theory with me.

And we would ask, therefore, that the interstate commerce law be amended so as to meet this deficiency in the existing law, according to the decision of the Supreme Court, and that is incorporated in the bill which was presented by Mr. Edward Morrell, of Pennsylvania. I have not looked for it, but I presume that it is referred to this committee, Mr. Chairman?

The CHAIRMAN. Yes; it is No. 10793.

Mr. WHITE. I have not the bill before me, but I had a copy in my office and could not find it when I was about to leave.

We ask that the committee shall either recommend or favorably report on that bill, or that you incorporate in your general amendments to the interstate-commerce law such an amendment as will meet this deficiency in the existing law, according to the decision of the Supreme Court. We do not ask for any special favors, we do not ask for any special legislation. We simply ask for that protection which is accorded to every American citizen. If our people are degraded, if they are unclean, if they are boisterous, if they are offensive, the authority is given to all carriers as well as all places of amusement to exclude persons who are offensive to the common public.

And I will state, as a matter of common knowledge, and certainly it is under my knowledge as a matter of common experience, that the average person of the colored people does not want to ride in a first-class car, and he always takes the cheapest fare, and he is not, as a rule, in any way offensive, and does not intrude into cars where either white or colored ladies and gentlemen ride. It is only a few who seek this. There are some who have been educated, have acquired property, and some who are refined in their manners, and they do not wish to be thrust among the outcasts and the vulgar and the objectionable of either their own race or other races. We insist that those of us should have the same class of accommodation as others over the highways and waterways of the country.

I state that we do not desire any discrimination or social equality; we have had enough of that; but we do seek an opportunity to enjoy

the privileges accorded to the public just as other citizens of the United States. It has been said to us that we are not equal to the Indians. I have no fight on the Indians. We are not equal to the Chinese, it is said, or the Filipinos; but there is one thing in which you will agree with me, which is that this country, from its first and earliest dawn, has been developed, controlled, and governed by two sets of men only—white men and black men. That may not be doubted by anybody or gainsaid by anybody. It is true that the negro has not figured very conspicuously other than in its development. We have, as you know, by our efforts—and have done so from the very earliest times to the present day—assisted in developing this country. We have furnished the brawny arms that have developed this country.

It is also known that even though we were liberated from slavery and were fully enfranchised, and were put on a parity with our white neighbors so far as the elective franchise was concerned throughout the South—it has been greatly questioned by some, and I am not here to argue that point, because it does not concern me here, and it is not the proper thing that I should do—but even in that crude condition, even when we had not the development, perhaps, to exercise at all times and intelligently the great responsibilities which came to us, it will be admitted that in all measures tending for the betterment and uplift of the country in the last fifty years the race played a not insignificant part in the measures which have made us the one of the greatest, and perhaps the greatest, nation on the face of the earth.

In the resumption of specie payments, in the advocacy of a sound currency of this country, in the tariff, in the protection of American labor and industries, in the advocacy of all public measures that tended to make this country a great country, the black man, though young in citizenship, has always been loyal and true. He has been accused of identifying himself almost entirely with one political party, and that is perhaps the reason for his present position. The severe way in which he is let alone here of late may break that up a little and change the aspect of that matter in certain sections. But I am not here to prophesy on that.

But we are here to ask that justice be done, and I need not go into detail in this matter. Even when we were slaves, in every warfare that we ever engaged in, the negro has shown himself patriotic and loyal to the flag, as well as to his master or his white neighbor—who was formerly his master—to-day. He is true to the nation; he is loyal to the flag; he is an American. You can call him an African if you will, but we have absorbed this spirit of the nation, and we are as thoroughly and wholly American as any other class of people on this continent. We are loyal because we could not be otherwise. We are an adjustable people. We inherited and absorbed it from the Southern white man, even when we were slaves, and we have proved it, and we have absorbed all that goes to make up a great and noble people, so far as our capacity under the restricted circumstances under which we have been placed would admit.

We have even absorbed your ways and your actions; yes, and absorbed your blood. We are Americans, loyal Americans. We are true to the nation and to the flag, at all times and under all circumstances, and therefore, as a part and parcel, as constituting one-eighth of the population of the country, we think we are entitled to—pardon me for using the expression, but I want to use language

which is not offensive—we think we are entitled to just as decent, respectable treatment by the carriers of the country on the railroads, steamboats, and otherwise as any others.

This discrimination which is made is not, as I stated a while ago, on account of the condition of the colored people, so much as a badge of caste, of degradation, of humiliation. Why, here when I was in Congress, in the Fifty-sixth Congress, the legislature of my State in passing a bill then to place these separate cars, or as they are commonly known “jim-crow cars” on the railroads of North Carolina, a thing never undertaken before, stated plainly that the nurse or the servant, however illiterate, however wanting in the development along civilized lines, was not objectionable to ride in the first-class cars, riding with the mistress or the master. But it was negroes like the famous Bishop J. W. Head, one of the most famous evangelists in the country; men like Col. James H. Young, and last, so they said, George H. White, of whom they said, “That is the class of persons we want to reach by the jim-crow car and bring them down to their place.”

Now, I think that my place is not to thrust myself forward in with white gentlemen. If I want you in my home, I will invite you, and if you want me, you will invite me, and unless I am bidden I will not come; and that is the sentiment of the average negro, and certainly that of the intelligent negro, of this country. But when you come down to a common car of a carrier that is such, and kept in such condition as those I speak of, and when I have to go in that car, and my wife—an educated woman, who feels just as your wife feels, who enjoys beauty as your wife enjoys it, who enjoys pleasure just as she does, who feels keenly an insult, or anything that tends to degrade her, and so do I—and I am forced to place her in such a position as that, we feel that such a condition is not just. We do not feel that we ought to be degraded by being thrust off in some little end of the car, where the riffraff of all races are loaded in, and where, aside from all the discomfort, a lady is likely to be insulted, and if we try to go into any other car we are likely to be kicked out—

Mr. RICHARDSON. Would you object to separate, equal accommodations?

Mr. WHITE. If the separate, equal accommodation was for no other purpose than for the carrying out of the letter of the law, and not for the purpose of my degradation; no, sir.

Mr. RICHARDSON. The question is “separate and equal accommodations”—where you pay a dollar and the white man pays a dollar, and you have separate accommodations, and are just as well provided for, and as comfortable in every respect.

Mr. WHITE. That we will never get.

Mr. RICHARDSON. Would you object to that?

Mr. WHITE. I feel that when I get on a railroad train, and I have business with you, or you with me, and I have a first-class ticket and you have one, that I ought to be permitted, if I had occasions to, as I had a short time ago, to come and sit down with you, or you with me, if you desired to do so, and continue to talk that matter over without any law.

Mr. RICHARDSON. You would apply the same principle to the hotels?

Mr. WHITE. No, sir.

Mr. RICHARDSON. Why?

Mr. WHITE. I never seek accommodations in the hotels, and I do not think you can point out a place where we have ever thrust ourselves forward——

Mr. RICHARDSON. The hotels are public matters, just as the railroads, both of them——

Mr. WHITE. They are public matters, but not in the same way. There are hotels where we can be accommodated by our own people, but we have no railroad cars and no steamboats, and we have to use yours.

Mr. RICHARDSON. Then you object to the separate accommodations just simply because it is a race discrimination?

Mr. WHITE. I would object to it, not because it is a race discrimination, but because it is intended—because it is meant to make me feel my inferiority, and to degrade me, whatever my qualifications.

Mr. RICHARDSON. Do you not know that on many of the railroads where these separate cars are used no white man is allowed to go into the cars set aside for the negroes?

Mr. WHITE. That is the law in a great many of the States, and it is violated every day so far as the white man is concerned, but never allowed to be violated where the colored man is concerned.

Mr. RICHARDSON. What part of the country do you refer to?

Mr. WHITE. I have been in South Carolina and Georgia; I have been in those two States.

Mr. RICHARDSON. I have been on some of the most extensive railroad systems in the South, and where a white man was not allowed to go into those colored coaches. I have been stopped myself, when I started to go in by accident, from going into the car. I was told that I could not go there, that that was set aside for colored people. I know that that is so on the Southern Railway.

Mr. WHITE. Yes; and I have ridden on the Southern Railway, from here to Wilmington, and to Atlanta, and I have found on the Southern Railway that an engineer greased from head to foot, or a coal heaver, or a brakeman, or any other employee, would come into that car, even though my wife, a decent lady, well dressed, was sitting there, and I have seen them take their drink of whisky right there in the presence of my wife.

Mr. RICHARDSON. I do not think that any fair-minded man would indorse that. I believe when a man pays a dollar he ought to get a dollar's worth of ride on the road.

Mr. WHITE. Yes, sir.

Mr. RICHARDSON. Still I believe in separate accommodations.

Mr. WHITE. I have stated in answer to your question what I have seen.

Mr. RICHARDSON. I think that is the spirit, and that is being done on the railroad I am speaking of, because I know I have seen it often and over again on the Southern Railway, that is, to exclude white men and white women from the colored coaches.

Mr. WHITE. In the State of South Carolina the statute is to exclude the white persons from the colored cars and the colored people from the white cars, and that is partially done; that is done in a measure. As I started to remark a while ago, I was coming down from Biddle University last June—I am an official of that university—and Dr. Satterfield was coming from Charlotte, N. C., to Concord, and he wanted me to stop at Concord and talk over with him in the interim some

matters of importance, and I wanted to talk over with him some matters, and I did not dare go in the car and talk with him, and he did not dare come in the car and talk with me, and we had to compromise by standing on the platform and talking until we got to Charlotte.

You might take one more illustration. I was Commonwealth's attorney in North Carolina, and after my term expired, when I was in Congress, I have met constituents—and I am glad to say, and say it with pleasure, that the Democrats and Republicans all came to me for what they wanted, irrespective of their party, and I made absolutely no distinction when I was in Congress, but tried to accommodate their wishes—I have had white Democrats and white Republicans get into a conversation with me at a station, and desire to continue that conversation, and I was not permitted after I got on the train to continue the conversation, but had to abandon it. I could mention these instances by the hundred. I do not advance this as the primary reason why we insist upon this equal accommodation and in the same car, but I insist upon it because the purpose and intent of the exclusion everywhere I have ever traveled in the South—and I was born and brought up in the South and never have lived anywhere else—the purpose of it was to degrade, to humiliate, to make me feel my inferiority.

MR. RICHARDSON. Right there, from an intelligent standpoint, and that is the only way I am presenting it to you, or wish to discuss it at all, how is it and how have you conceived it to be a matter of degradation when equal accommodations are provided for your race as are provided for the white race? How can it humiliate you when you are simply associating with your own race?

MR. WHITE. I never object to associating with my own race.

MR. RICHARDSON. How can it humiliate you?

MR. WHITE. It can, under the very terms of the statute, and the reasons I have given to you. I may live in a community and may have a white man employed as a hand on my farm, a poor white man living in one of my tenement houses, and yet when we go to the station he gets into a first-class car, and nine times out of ten—you speak of it as the exception, but the rule is—I have to go into one where there is smoking, and where I meet all these conditions which I speak of, but he goes into the other cars, and he feels that he is my superior, and he feels a degree of hatred for me, and he feels that I am not even fit to work with him, and it brings about a spirit and a feeling between common American citizens that ought not to exist in a free republic.

MR. WANGER. To what extent are these cars used in interstate travel?

MR. WHITE. They are used universally, so far as I know, except that now and then there are some of these fast mail trains from here to Tampa, Fla., and farther south, where the cars make only one or two stops in a State, and then I believe they carry only one day coach. Those are usually vestibule cars on those trains, and in the day coach, where there is no discrimination, I have been told by others that in cases like that they make no exceptions except in coming up from Charlotte and Atlanta, Ga.; those are the only places. I know you can not ride in a Pullman car in Georgia unless you come in from some other State, and they provide nothing else equivalent to it. You can not get into a Pullman car.

MR. WAGNER. Is that under a law of the State?

Mr. WHITE. Yes, sir; in Georgia. You can not get on a Pullman car in Georgia, even going to Washington City.

Mr. RICHARDSON. I traveled there not long since, and I will give you an instance of my own experience on this same railroad. I saw two colored men in one of those cars.

Mr. WHITE. They must have gotten on before they came to the State of Georgia. A man can get on and go through the State of Georgia, but you can not get on in the State of Georgia, because I have tried it; I tried it last June——

Mr. RICHARDSON. If they——

Mr. WHITE. If you came into the State on that car, I do not think they would put you off, but I tried it in Savannah last June, and could not get onto one of those cars.

Mr. COOMBS. Will they allow you to get on to go out of the State?

Mr. WHITE. No, sir; not on a Pullman car anywhere in the State, and they provide nothing equivalent to the Pullman car. No one here will argue that an ordinary day coach is equal to a Pullman car, and you can not get on a Pullman or a Wagner car, no matter where your destination is. It was after 12 o'clock at night when I got on at Savannah, and I insisted I was tired and wanted to go to bed, wanted to lie down, and they would not allow me to get on the car until we crossed into South Carolina, nearly 3 o'clock in the morning, and I had to get into a day coach and stay there until I got out of the State of Georgia, and my destination was Washington, and my ticket was for Washington City.

Mr. WANGER. You say white people are not allowed to enter the cars set apart for colored people in the State of South Carolina?

Mr. WHITE. That is the law, but it is violated every day. No colored man, unless he goes in the capacity of a nurse or a servant, can get into a car occupied by white people and ride for a half a mile without being put out.

Mr. RICHARDSON. Well, you can make complaint to the Federal courts.

Mr. WHITE. Yes, we have made complaints.

Mr. RICHARDSON. You got justice, did you not?

Mr. WHITE. No, sir. Every man on that case was born and reared there, and there is no difference between——

Mr. RICHARDSON. Then you are practically excluded from justice in the Federal courts as well as in the State courts?

Mr. WHITE. In my opinion the juries are about the same as the judges.

Mr. RICHARDSON. How about the judges?

Mr. WHITE. The judges are just the same.

Mr. RICHARDSON. The Federal judges are the same?

Mr. WHITE. Yes, sir; they are Southern men, with all the feelings of those in the State courts.

Mr. RICHARDSON. This is for information that I am asking you. You say you have practiced for many years in the Southern courts. I believe you said in the South Carolina courts?

Mr. WHITE. Yes, sir; only in the Southern States.

Mr. RICHARDSON. I am speaking of the Southern States.

Mr. WHITE. I have practiced limitedly in Virginia. For instance, when I was Commonwealth's attorney I had occasion to go over into Virginia to take depositions, and I know something of the practice of

the State, but I never was a member of the bar there. I practiced continuously in the State of North Carolina for twenty-four years.

Mr. RICHARDSON. And I suppose you never heard of negroes being jurors in your practice?

Mr. WHITE. Certainly. There are jurors to-day in the South—negro jurors. I have tried cases with one-half or two-thirds of the jurors negroes.

Mr. RICHARDSON. You found the negro on the jury generally went for conviction?

Mr. WHITE. I never found that so. I found him usually a pretty fair-minded man.

Mr. RICHARDSON. They are usually very much afraid of them in the Alabama courts.

Mr. WHITE. I would be afraid of the courts entirely in Alabama. I have been there.

Mr. RICHARDSON. And particularly in the trial of people of their own color.

Mr. WHITE. Perhaps so, but I have found juries about the same, whether white or black. These colored men have absorbed the American idea, and do about as other jurors do.

Mr. RICHARDSON. Do you not know it is a fact that is accepted by almost all people who are informed, that you take a negro in the South, when he is charged with some indictable offense, that his direct preference is to be tried either by former slave owners or the descendants of slave owners?

Mr. WHITE. No, sir; I do not know that, and never have observed it as practice or common information.

Unless there is some question I would be glad if the committee would hear from Rev. Walter H. Brooks for a few minutes.

STATEMENT OF REV. WALTER H. BROOKS.

Mr. BROOKS. There are just a few things that I would like to say with reference to this matter. I, of course, have traveled a little in Virginia and through the South, and lived in Virginia. I was made free by the emancipation proclamation, and I think I know what are the prevailing customs in the South so far as the "jim-crow" system is concerned. I am opposed to the "jim-crow" car because as a rule it is an off-cast or old stock coach, and part of it is used for baggage, or as a smoker for both white and black people; and that is on the Southern Railroad. The coach in the front part has a little apartment for colored smokers, in the center your colored ladies and gentlemen are seated, and in the third part of the car, in the back end, the white smokers are seated. That is the colored first-class car. It is nothing but an old smoker.

We have been ejected from the coach in which we used to ride and put right in the smoker. That is all we have for first-class pay. That is a downright swindle—a downright swindle. If I paid second-class fare for that second-class trip I would have no right to object; but that is the practice of the Southern Railroad system that goes out of Washington. I have traveled, and speak that I do know, and testify to that I have seen. I took my daughter, a teacher in the public schools of this city, and had to thrust her into just a condition of that kind last year when she went from this city, and she had to take that car in

the District of Columbia, or else take another car in the District of Columbia, and as soon as she reached the border line, and crossed the border, to be asked out of that car in which she was and then to get into the "jim-crow" car.

This coach in which we ride is always nearest to the engine of all the passenger coaches, so that in case of any serious accident the black man, who is the best prepared to meet his God, will be the first to reach heaven, or if he survives the last to extricate himself from the débris of the wreck.

Mr. RICHARDSON. Do you think they put him there for the purpose of having him killed?

Mr. BROOKS. For the purpose that if anybody is killed that he shall be the man. That is certainly the intent; it is not an accident.

Mr. RICHARDSON. The sleepers are frequently on the rear.

Mr. BROOKS. The sleeper is in the most protected part of the train. The man farthest from the engine, which is the safest place, is the best off, because he can see the danger and jump, but the men who are in the mail coaches, the men who are in the baggage cars, the smokers, the first-class cars, are the most exposed, and we pay the same fare, and can not help ourselves. That is not just; that is all about it.

Moreover, the colored citizen has to buy the same ticket and he pays the same fare as his white neighbor and often fails to secure like accommodations as a through passenger. For instance, I went to Warrentown, Va.; I took a car, and traveling in Virginia I had to travel in the "jim-crow" car, but my white friends on leaving this city went through on a through coach. I changed at Manassas and I could not stay in that car, and I saw my white friends who went from this city pass through from one track to another, and they did not have to leave the car at all. I say that is unjust. I paid the same fare as other people paid, but did not get the same accommodations. Now, you talk about facts; these are facts taking place right here in the District of Columbia, and on the Southern Railway that goes out of this city. That is not equal accommodation by any means. Now, if there is any remedy anywhere we ought to have it.

Then, too, it must be remembered that this is a separation in travel, not of two races. It is supposed to be a separation of two races. No; it is a separation of the colored people from the rest of the traveling public. The Indians, Chinese, white people, and the rest of the American population who travel go into what is called on the sign "For white people." Indians, Chinese, white people, and the rest of the American public travel under that sign, in the coach that bears the sign, "For white people." The man with a black face must go into the other car. "That is your place." That is what we are told.

Now, this is not just. If the rest were separated; if the Chinese, who are colored people; if the Indians, who are colored—you are white, but the Indian is not a white man; the Chinese is a colored man; all the rest of the races are colored folks.

Mr. STEWART. Is not that a misnomer? Black is the absence of all color. Is not the black race rather to be termed the "colorless" race?

Mr. BROOKS. No; not since we came here. Not in America. We were in Africa, but not in America. In America we are mixed. That is not just. That shows that the whole spirit of the thing is to degrade me, to degrade my people.

Then another thing; there are convicts and their guards to be shipped from place to place. Do they travel in white cars? They are of your people, and of my people, but they are put into our coaches because our coaches are the degradation coaches. They are the coaches for the filth and the scum class. They dump all of that class into our coaches.

Mr. COOMBS. What do you want?

Mr. BROOKS. Justice.

Mr. COOMBS. That is an abstract idea—justice; but with reference to the law, what remedy would you suggest?

Mr. BROOKS. I would say accord to the people what they pay for and do not compel me to travel in a coach with a convict because my skin is black.

Mr. WHITE. Pardon me a moment. We seek a redress couched in language which makes that an offense against the Federal law for the common carrier, the railroad, to make a discrimination even on account of race, color, or previous condition of servitude.

Mr. BROOKS. Nothing will suit this country better than simple justice. We number 8,000,000 of the people of the United States. Now, whatever degrades us in the long run is going to degrade you. I repeat it. Whatever degrades us in the long run is going to degrade you. The reason the South is not more prosperous to-day is that they spend too much time holding us down, and if two men are on the ground, one man may be on top, but they are both down, and there is too much time spent trying to hold us down.

I ask you, in the name of justice, in the name of God, to be fair, to do the fair thing. If I was not satisfied that injustice could not stand, I would not ask you. I am satisfied that nothing that is wrong will stand.

On the Pennsylvania system it is a little better going out of that State than Richmond. They actually give us a part of the white man's car. They have four seats with a plank partition between us and the white people; but mark you, we can not go into our end of the car by passing through the other end of the car, but the white people can pass through our end of the car to get into theirs. And where there are very crowded conditions they will never put passengers into the next coach. That is a violation of the law. But I have seen it done in this way. When there is a little portion of the smoker the center of which is for colored ladies and one end for colored smokers and white smokers at the other, they will take your colored lady and say "You are standing; come here into this white portion of the car," and they will put that woman in there among white smokers. They will never put her into the car where there are ladies and gentleman traveling of the white race, where there is not any smoking.

Now, our friend here asked "What is your objection to the same accommodation?" Somebody asks "Why is a living fish heavier than a dead fish?" First you have to prove that to be so, and the first thing for you to find is to find the equal accommodations. I have not found the like accommodations. When the time comes, as it will, when we will build coaches and own railroads ourselves, we will have equal accommodation, just as we have as good churches, because we are building them and owning them, and we are not going to get the fair thing at your hands unless you try and try hard; and now I appeal to you in the name of justice. No nation can succeed by doing wrong. There is a God in heaven, and He reckons with nations as He reckons

with individuals. He has reckoned with the American people once, and He will reckon with them again if they do not do justice by them and everybody else.

Now, we appeal to you gentlemen for the remedy.

STATEMENT OF MR. CYRUS FIELDS ADAMS.

Mr. ADAMS. I am opposed to the jim-crow law, because I believe it is contrary to the spirit of the American institutions. We claim that this is a free country, a country in which all citizens are free and equal, and for that reason I think that all citizens should be treated alike on the common carriers of the country. I claim, gentlemen, that a republic has absolutely no right to discriminate between its citizens. We are either slaves or citizens. Many years ago it was said that the country could not exist half slave and half free. The chains have been taken from the limbs of the negro and the mixed-blooded people of this country, but they are not yet free. They have been declared free, but they are not yet free, and will not be free until they are allowed to enjoy all the privileges, all the rights, and immunities of other citizens.

Mr. White, in speaking of the law in Georgia, called your attention to the discrimination there, but there was one point that he omitted, and that was this: The Georgia law required separate cars. The separate cars are furnished, but they are not equal. Now, in order to compel negroes and mixed-blooded people to go into those separate cars, to go into those cars where they are degraded, they have passed another law in Georgia which forbids the selling of tickets on a Pullman car, so that there is no way to evade it in that particular State. In some of the other States the person who does not wish to travel in a jim-crow car can buy a Pullman ticket, but that is prevented in the State of Georgia.

Another thing. One of the gentlemen spoke of the number of the colored people in this country. The census shows that there are about 9,000,000, but you gentlemen know that that is very wide of the mark. There are not less than twenty-five or thirty million colored people in the United States. That may be an astounding statement, but it is a fact.

Mr. RICHARDSON. Where do you get that information from?

Mr. ADAMS. From knowledge of conditions that I have in the South. We know that the people in the South have so mixed up, the blood is so badly mixed there that it is pretty hard to tell who is white and who is colored, and if you doubt it just gaze on me.

Mr. WANGER. How are you enumerated in the census?

Mr. ADAMS. Well, they are enumerated as negroes in this last census, but it is claimed that there are only about 9,000,000 negroes in this country. That is not true. It is absolutely untrue. From the best information we have, there are not more than 2,000,000. I think Bishop Grant in his book estimates that there are about two or three million negroes in the country. Even my friend Mr. Brooks there, who is a dark man, has some white blood in him, and many of the men whom you meet in the streets who are darker than he is have some white blood.

Mr. WANGER. How do you account for the fact that the enumerators make such a mistake as that?

Mr. ADAMS. Because of the conditions in the South. It is a great insult for a man to ask a white man in the South if he is a white man, and suppose a white man, if he is white, and the census enumerators were to dare to make such an inquiry of him—they would not dare to ask such a question of a white man.

Mr. COOMBS. I do not understand your statement. You say they are not enumerated under the head of blacks?

Mr. ADAMS. They are all enumerated as negroes.

Mr. COOMBS. Yes. Now, if that is true, and the enumeration shows but 9,000,000, how can you say that there are from 29,000,000 to 30,000,000 negroes in the United States?

Mr. ADAMS. That is an estimate. I think there are that many because there are—many of the best families in the South are of mixed blood, and they are called white people. Senator Tillman admits it, and certainly the race has no worse enemy in the country than he. He admits that the mixture is so great that it is impossible to distinguish in many cases. When the question was discussed in the constitutional convention of South Carolina they declared that a person having less than one-eighth negro blood was a white man. They wanted to make it a little stronger than that—some people did—but Senator Tillman said that would not do. If they made it any stronger than that, one man said, it would hit 400 families in his district who claimed to be white people.

Mr. RICHARDSON. Do you claim that anywhere in the South a man who has negro blood in him is classed as a white man?

Mr. ADAMS. Yes, sir.

Mr. RICHARDSON. Whereabouts?

Mr. ADAMS. Thousands of places in the South.

Mr. RICHARDSON. Name one place.

Mr. ADAMS. I do not need to name—

Mr. LAWSON. Ex-Senator Gibson and Judah P. Benjamin were instances of that.

Mr. ADAMS. Alexander Hamilton, the man who founded the Treasury, had negro blood.

Mr. LAWSON. Ex-Senator Gibson said:

If you take it through Louisiana, I could buy for a dollar and a half gumbo enough to feed all the people of pure blood in Louisiana.

That was his statement.

Mr. ADAMS. And there can be no doubt in the minds of our people who are investigating the matter; and we find that many of the most illustrious names in this country have come from the fact that they have negro blood in their veins; and if they were on earth to-day Alexander Hamilton would be compelled to ride in a jim crow car, if they knew it. I have traveled in the South, and if they had known I was a negro they would have pushed me into those cars.

Mr. RICHARDSON. What quantity of negro blood did Alexander Hamilton have?

Mr. ADAMS. Probably a very small portion; one-sixteenth perhaps.

Mr. STEWART. The coloring of the negro indicates Caucasian blood. Now, then, by what deduction of reasoning can you say that the lightness of the man shows the negro blood in his veins; how does the lightness of Alexander Hamilton evidence his negro blood?

Mr. ADAMS. We looked up his history and found that his grandfather was of mixed blood, and was so known and recognized in the

island where he was born. Mr. Nevis here has looked up the matter and has the data.

Mr. TOMPKINS. You are not compelled to ride on jim-crow cars?

Mr. ADAMS. They look at me and are afraid that they might insult a pure white man by asking me, and they would not dare to do such a thing as that.

Mr. LAWSON. I could give you an instance of a woman who was practically perfectly white, and when she attempted to ride, they took her out, baggage and all, and thrust her into the other car.

Mr. TOMPKINS. The reason I ask is that you are very light. When a man bears the mark of the white man as you do, he is not compelled to ride in the jim-crow cars?

Mr. ADAMS. No, sir; when a man is as white as I am, as a rule, he is not necessarily compelled to go in the jim-crow car.

Mr. STEWART. When you were questioned by the census enumerators, was that question put to you?

Mr. ADAMS. No, sir.

Mr. STEWART. Whether you were a negro or a pure white?

Mr. ADAMS. No, sir.

Mr. STEWART. Then you were enumerated as a white person?

Mr. ADAMS. No, sir.

Mr. STEWART. How do you know?

Mr. ADAMS. Because I gave it in myself.

Mr. RICHARDSON. Have you ever been mistaken for a white person in the South?

Mr. ADAMS. I have been taken for a white man; yes, sir.

Mr. RICHARDSON. You have been mistaken for a white man, have you?

Mr. ADAMS. Yes, sir.

Mr. WANGER. You are generally presumed to be so?

Mr. ADAMS. Yes, sir.

Mr. WANGER. Where you are not known?

Mr. ADAMS. Yes, sir; that is the point. While might not be disturbed, still my friends here who happen to be a little darker, who happen to have a little more of negro blood, would be; but they are gentlemen of responsibility and gentlemen of property and gentlemen of intelligence, and they are gentlemen of culture and refinement, and they are entitled to the same rights and privileges as I get and you get, gentlemen, or anyone else gets.

Mr. BROOKS. I have a friend who is a minister, and he and his wife came to Washington and traveled from their old home in Virginia. They attempted to put his wife in a jim-crow car and insisted that the husband should go into the white car. He was fairer than my friend here, and the woman was of an Indian color; but both of them were colored people.

Mr. ADAMS. This is a very serious question. When I look around and see the very many shapes and forms in which the race is confronted with these difficulties on the steamboats and railways and in the hotels and everywhere else in this country, which is claimed to be a free country, the more I am convinced that this is a very serious question for us to consider, for you to consider, gentlemen, and to the interests of the nation. The question occurs to me, Is not this but the beginning of the dissolution of this nation; when we see that

American citizens are denied their rights, the simple rights as citizens, is it not the beginning of the death of this nation, the dissolution?

Nations do not live forever. History shows in the past that they come up—they are born—pass through youth, maturity, and old age, and back to dissolution; and I say that this is a serious question, because I believe that unless this question is settled and settled rightly, settled on the lines of justice to all men without regard to race or to color, that this is but the beginning of the dissolution of the nation, and that in not many years. Years in the life of a nation are centuries. I do not mean to say that this nation will pass away in a few years, but unless this question is settled right, in less than one hundred years or so this nation will cease to exist.

Mr. LAWSON. Thanking you, gentlemen, I wish to say with regard to the amendment just one word, and then I am through. We offer an amendment to the interstate-commerce law, and in that amendment we insist not only upon an equivalent of right, equal accommodation, but we insist upon identical accommodations and identical rights as American citizens, as soldiers, as everyone appertaining to the honor and glory of this country, we think that we ought to have it. I hope that you gentlemen will look into it and will bear that in mind.

Then we insist upon it for this reason: You have in Mississippi what is known in voting as the understanding clause. A man must either read or write or own property or understand what is proposed to him. They have one line of questions for the colored and one line for the whites. They ask the white man how much are two and two, and he will say four. They may give the colored man something in calculus, something that will involve a series in trigonometry or in logarithms, so that if he knew how to evolve the series of logarithms it would take several days, so that he can not possibly complete the process within the time which he has to vote. So that one man may get a vote in in Mississippi, but it may take him all day, according to the understanding clause. So that if you put it down as equal accommodation, the accommodation that is said to be equal will never be equal, and they never will get it.

The only way that we can get equal accommodation is to have the same thing, just as you have in this country one money for the black man and for the white man. If you had a silver dollar for the black man and free coinage of silver, you would give him that silver dollar under the free coinage of silver. And so the only chance for the black man to have equivalent accommodations is to have the identical same thing as the white man has. He has the identical money now, the identical greenback and gold dollar, and everything in that way, and if we do not have the identical thing in the way of accommodations, we will never get an equivalent.

Mr. RICHARDSON. Do you not know that the Supreme Court of the United States has passed upon the constitution of Mississippi and pronounced it constitutional?

Mr. LAWSON. No, sir. I know that it has passed upon a certain phase, which was not upon the merits of the case, in the Williams case but as to the constitution of Mississippi, as to the essence of the constitution of Mississippi, the Supreme Court has never passed upon that. But the Supreme Court will pretty soon have a chance to pass upon that, in Louisiana and Alabama, and all the rest of the States,

for we have cases going through the courts of Mississippi and Alabama which will bring the matter before the Supreme Court on its merits.

On the jim-crow law the supreme court has only passed upon something which the State court had made a law, and there was no Federal legislation respecting it; and I believe that the Supreme Court has always held that where the Federal court has had jurisdiction, where the Federal Government has had jurisdiction, and the State legislature has also had jurisdiction, that each may legislate for it, and in the absence of any Federal legislation the State law will control; but if Congress has jurisdiction over that subject-matter under the Constitution, then the laws of Congress supersede all the laws of the State. I think that is the doctrine of the Supreme Court as always held.

Now, having that in view, that is why we want Congress to legislate.

Congress has not legislated, and if there is not the right under the interstate-commerce law, by the first article of the Constitution, or under the fourteenth amendment to the Constitution, there is that right, and having that right we want the Congress to put it in there so that it will not be mistaken.

And then again, we want Congress to put it in there fixing the penalties, so that the juries down there may not award 1 cent damages and put a man to enormous expense and more inconvenience than he had before and still he get nothing out of it, so as to discourage us in bringing actions. And we ask this of the Republican Congress—of the Republican Congress that has put everything in the Constitution that has been for our people. We ask that of them, and we expect them to do it.

The people all through this country are thoroughly aroused on this matter, as will be shown by the petitions presented to this House from all over the country, and we hope that there will be no mistake, and when this measure comes up and when this measure has gone through Congress there can be no mistaking its meaning in any way, shape, manner, or form. And we ask it and expect it, and I believe that we have a right to expect it of you gentlemen.

Mr. ADAMS. Gentlemen, I want to say before leaving that we are not willing to accept any bill that speaks of separate and equal accommodations. We do not want separate accommodations. We want the same kind of accommodations that all other American citizens get.

Thanking you, gentlemen, for your attention, that is all I desire to say.

(Thereupon, at 11.45 a. m., the committee adjourned until Monday, May 19, 1902, at 10.30 o'clock a. m.)

FRIDAY, *May 23, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

**STATEMENT OF MR. WALKER D. HINES, FIRST VICE-PRESIDENT
OF THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.**

MR. HINES. Mr. Chairman, I will state, to get it in the record, that my attention to this subject has extended over a number of years, perhaps the last six or seven years. I have given attention to it in the capacity of assistant chief attorney of the Louisville and Nashville Railroad Company up to last fall, when I was made first vice-president of that company, which is the capacity in which I now appear.

As the time is somewhat limited, I will not attempt to cover the whole field that is embraced in these proposed amendments to the interstate-commerce act, but will try to confine what I have to say to the rate-making power, and I regard it as very important in that connection to say a few words about the present law.

Impressions have undoubtedly been created for a number of years by the statements of the Interstate Commerce Commission and by its members that there is now practically no control whatever over the railroad rates in this country, to prevent their being excessive or to prevent discriminations between localities, but that impression is altogether erroneous.

The present law prohibits unreasonable rates and prohibits all undue preferences between localities or persons or sorts of traffic. It authorizes the Commission to order the discontinuance of any of these things prohibited. It gives prima facie validity to the orders made by the Commission, and upon an attempt either by the Commission or any interested party to enforce that order in court it makes it the duty of the court to give a speedy hearing and to enforce the order unless it is shown to be unlawful. No appeal from the order of the circuit court can supersede that order. That is a point that has generally been misunderstood. When the circuit court passes upon the order and decides that it is a legal order and should go into effect, the act provides that no appeal shall suspend the operation of the order which the circuit court makes.

MR. RICHARDSON. That is the complaint that the Interstate Commerce Commissioners make, right there, that there is such a delay in the courts.

MR. HINES. I was going to speak of that. But on that point, about this suspension of the orders upon appeal from the circuit court, the fact is that when the circuit court comes to make its order, if it appears that the public interests will be best served by suspending its own order, it can do so, but unless the circuit court takes affirmative action and suspends that order, no appeal that the carrier can take will prevent the order going into effect at once.

MR. RICHARDSON. The complaint of the Commissioners is that delay in the courts practically nullifies the law, and do you not think that the remedy for that would be to make those cases preferred on the dockets?

Mr. HINES. I think so.

Mr. RICHARDSON. And give them a prior trial?

Mr. HINES. I think so; a complete remedy. But just to state now briefly an illustration of that in a case which occurred down in one of the Southern States. The Commission condemned a certain rate as unreasonable and ordered its discontinuance. The circuit court reached the conclusion that the prima facie effect of the order of the Commission had not been overcome, and therefore sustained the order of the Commission. The carrier appealed, but its appeal did not supersede the order. The carrier, of course, did not wish the order to be put into effect and to change its rate pending its appeal, if it could help it, and it applied to the circuit court for a suspension of the decree of the circuit court pending the appeal; and it was wholly in the discretion of the circuit court as to whether it would do that, and in view of the doubtful character of the case, and of the hardship which the carrier would incur, that court ruled that if the carrier would give a bond in some large amount, and would keep an accurate account of all shipments made under the rate involved, that on those conditions its decree would be suspended pending the appeal.

Now, that is the present law, and I submit that it is a workable statute and a just statute. The circuit court is in a position to know whether the public interests require the immediate enforcement of an order. If so, it can refuse to authorize the suspension. If it grants the suspension, it can do so upon such terms as it deems proper. So that the statement that an order of the Commission can not go into effect until the court of last resort has sustained it is incorrect.

The question has arisen as to delays, and it has been stated that the average time which it takes to get a decision by the courts on an order of the Commission is four and one-half years. That statement is misleading, because it takes into account cases in which the Commission has proceeded on an entirely erroneous view of the law, and the courts have almost without exception declined to enforce the Commission's unlawful orders. Of course, therefore, it was not proper that those orders should go into effect at any stage of the litigation, and as a matter of fact, they ought not ever to have gone into effect, and have never gone into effect, because the courts, almost without exception, have declared the orders to be unlawful.

Now, when the Commission proceeds within what are now the pretty well defined limitations of the act, there is no occasion for delays of that character. It is simply a question of the time within which the circuit court will take up the case and decide it. If the circuit court believes that the order of the Commission is lawful, then it is for that court to say whether it shall go into effect immediately, or whether it will suspend the order during the appeal.

The fact that considerable time elapses in the circuit court is not due to any settled disposition or determination of the railroads to delay the case. It is due to the fact that the cases are of a difficult character, involve large amounts, and that everybody connected with them sees the importance of proceeding slowly, including the Commission itself; for I think the delays in the Commission will equal those in the circuit court, and it is simply a question of procedure in the circuit court. Of course, if that court were directed to give precedence to these cases over others, those delays would be shorter; but I contend that the present statute is a perfectly workable and just statute.

Now, it is said that all this does not amount to anything. Mr. Prouty said, "What good does it do for us to order a discontinuance of undue rates and preferences?" And Mr. Knapp said that the railroads might comply only in a technical way. This is the remedy which Congress deliberately established, after prolonged investigation by a special committee which devoted much time and ability to the subject.

Mr. MANN. Before you go into that, can you tell what are the facts in reference to the cases that have actually been tried, pending the appeals, and whether the order went into effect or not?

Mr. HINES. I am coming to that immediately, if you please. I submit that a remedy thus deliberately adopted is entitled to a thorough trial before it is thrown aside as worthless, and that trial has never yet been given, because almost without exception, until comparatively a short period in the past, the Commission has not proceeded at all according to the law.

Coming now to the question as to the history of the various cases, as I recall, there have been only two cases out of the numerous cases which have been before the courts in which the Commission has been sustained. Of course, in the cases where the Commission has not been sustained, it was natural that their order should not put into effect.

Mr. RICHARDSON. Right there, just let me understand you. I ask for information. You say that out of the great number of cases where the Commission fixed rates, they have been sustained in only two cases?

Mr. HINES. That is my recollection.

Mr. RICHARDSON. I just want to get what information you have.

Mr. HINES. If I find that I am incorrect, I will send the stenographer a correction on that point.

Mr. MANN. I suppose you mean two cases that have been appealed to the upper court?

Mr. HINES. I mean two cases altogether.

Mr. RICHARDSON. You mean sustained by the higher court?

Mr. HINES. The court of last resort.

Mr. RICHARDSON. Or based on it?

Mr. HINES. Yes, sir; the Supreme Court of the United States.

Mr. MANN. The Supreme Court of the United States?

Mr. HINES. Yes; and I mean the cases that are now pending in the lower court; only two of those cases.

One of those cases was a comparatively early case, the Social Circle case, so called. In that case the circuit court held that the order of the Commission was unlawful. Of course, it therefore did not put the order into effect. The circuit court of appeals held that one branch of that order was unlawful, but that the other was lawful. The law provides that no appeal shall supersede the order of the circuit court; so, as I understand it, it is the order of the circuit court that controls pending appeals.

Mr. MANN. Is it your recollection that there are only two cases in which the circuit court has affirmed the order of the commissioners?

Mr. RICHARDSON. I understood you to say the court of final resort.

Mr. HINES. Yes, sir.

Mr. MANN. The question could not have arisen over this as to the practice—

Mr. HINES. That case went to the Supreme Court, and the circuit court was affirmed on both branches.

Mr. RICHARDSON. Can you give the percentage of affirmations—what is the number of opinions that were appealed from, and what is the percentage of them which were sustained? If there are only two cases, have you any idea how many went up that were reversed?

Mr. HINES. I suppose ten or twelve cases were passed on by the Supreme Court, and a great many more by the lower courts that have not been appealed.

The other case which I have in mind which has been sustained is a case in the Southern courts, where the court decided in favor of the Commission, but permitted its decree to be suspended on appeal, and that went to the circuit court of appeals and was reversed on all points, and I believe it is now in the Supreme Court.

As I say, I will make any corrections which I find necessary when I get the stenographer's report, because I have not all these cases well in mind. The only case other than that which I have referred to which has been instituted and has made substantial progress since the present construction of the act has been recognized by the Commission, which has been, say, for the last four years, is what is called the Chicago Live Stock Terminal Charge case. In that case the Commission declared that terminal charges imposed by the Chicago yards upon live stock delivered to the stockyards were unjust and unreasonable, and ordered the roads to cease charging that rate. The circuit court on demurrer held that that was a proper order, as a matter of law—that is, that it was within the jurisdiction of the Commission; that they could order an unreasonable rate to stop. When it came to the trial on the merits of the case, the court held that the rate was not unreasonable, and pointed out at considerable length that it was a very reasonable rate, and declined for that reason, on the merits, to enforce the order of the Commission.

Of course that order did not go into effect when the circuit court passed upon it. That case went to the circuit court of appeals, which affirmed the order of the circuit court, one of the three judges dissenting, and that case is now in the Supreme Court. Those are the only two cases which I now recall where the Commission was sustained. There is only one case where the Commissioners were finally sustained in the Supreme Court, which was the Social Circle case, and the other case in the Southern States—I believe it was in Alabama—was sustained by the circuit court, and that was overruled by the circuit court of appeals.

The CHAIRMAN. Is this case which you have just referred to the one that the Commission referred to as having taken away from them the rights to fix rates which they say previous to that time they had exercised?

Mr. HINES. The Social Circle case?

The CHAIRMAN. No, sir; this one of four years ago.

Mr. HINES. No, sir; that was, as I understand it, after the Supreme Court had made their decision, and proceeded on the lines which the Supreme Court has laid down as what the act means.

Mr. MANN. That went beyond any finding of the Supreme Court in that case?

Mr. HINES. What?

Mr. MANN. They went beyond any position that the Supreme Court had taken as to practice in the Chicago Stockyards case.

Mr. HINES. I only said in regard to that that they made that order,

which was construed to be lawful within their jurisdiction, and the court overruled it, although holding that it was a lawful order.

Mr. MANN. But the court held that the Commission did not have the right to fix rates?

Mr. HINES. No, sir; not in that case.

Mr. RICHARDSON. And even if they had, that they had usurped that right and were undertaking to fix rates——

Mr. HINES. Not in that case.

Mr. RICHARDSON. No; not in that case.

Mr. HINES. They were proceeding along the line which has been held by the court, that they can order the discontinuance of a rate which it unreasonable.

Mr. MANN. But when you come to the merits of the case, they did not think that the rate was unreasonable, and therefore the court did not sustain the order.

Mr. HINES. Yes, sir.

The record of the Interstate Commerce Commission in enforcing its orders in court seems to be about as follows:

K. and I. Bridge case: Overruled by circuit court, and no appeal. (37 Fed., 567.)

I. C. C. v. B. and O.: Overruled by circuit court (43 Fed., 37) and by Supreme Court (145 U. S., 263).

I. C. C. v. T. and P. Ry. Co.: Sustained by circuit court (52 Fed., 187) and circuit court of appeals (57 Fed., 948); overruled by Supreme Court (162 U. S., 197).

I. C. C. v. C., N. O. and T. P. Ry. (Social Circle case): Overruled by circuit court (58 Fed., 925); overruled by circuit court of appeals as to rates from Cincinnati to Atlanta, which the Commission made, but sustained as to the Social Circle long and short haul order; no opinion by circuit court of appeals; position of that court sustained by Supreme Court (162 U. S., 184), which also held in that case that the Commission had no power to make rates.

I. C. C. v. Detroit, etc., Ry. Co.: Sustained by circuit court (52 Fed., 1005); overruled by circuit court of appeals (74 Fed., 803) and by Supreme Court (167 U. S., 633).

I. C. C. v. D., L. and W.: Overruled by circuit court (67 Fed., 724).

I. C. C. v. Ala. Mid. Ry.: Overruled by circuit court (69 Fed., 227) and circuit court of appeals (74 Fed., 715) and by Supreme Court (168 U. S., 144).

Behlmer v. L. and N.: Overruled by circuit court (71 Fed., 835); sustained by circuit court of appeals (83 Fed., 898), one judge dissenting; overruled by Supreme Court (169 U. S., 644).

I. C. C. v. L. and N.: Overruled by circuit court (73 Fed., 409); appealed to the circuit court of appeals and there dismissed by the Commission.

I. C. C. v. N. E. R. Co.: Overruled by circuit court (74 Fed., 70) and by circuit court of appeals (83 Fed., 611).

I. C. C. v. Lehigh Valley Ry.: Overruled by circuit court (74 Fed., 784).

I. C. C. v. C., N. O. and T. P. (maximum-rate case): Overruled by circuit court (76 Fed., 183). Question certified by circuit court of appeals and the Commission again overruled by Supreme Court (167 U. S. 479).

I. C. C. v. W. and A. R. Co.: Overruled by circuit court (88 Fed.,

186), by circuit court of appeals (93 Fed., 83), and by Supreme Court (181 U. S., 29).

I. C. C. v. C., B. and Q.: Overruled by circuit court (98 Fed., 173), by circuit court of appeals (103 Fed., 249); now in Supreme Court.

E. T., V. and G. v. I. C. C.: Sustained by circuit court (85 Fed., 107) and by circuit court of appeals (99 Fed., 52), but overruled by the Supreme Court (181 U. S., 1).

Sou. Pac. Co. v. Col. Fuel and Iron Co.: Sustained by circuit court, but overruled by the circuit court of appeals (101 Fed., 779).

I. C. C. v. L. and N.: Sustained by circuit court (102 Fed., 779), but overruled by circuit court of appeals (108 Fed., 988); now in Supreme Court.

I. C. C. v. Southern Ry.: Overruled by circuit court (105 Fed., 703).

I submit that you have in the present law an important and substantial control given over railroad rates to the Interstate Commerce Commission, although that control has been minimized and deprecated by the Commission ever since the Supreme Court decided that the Commission did not have the rate-making power.

It has been said by a number of gentlemen here that everything just collapsed when this maximum-rate case was decided by the Supreme Court in 1897. It would not have been surprising if it had, because the Commission announced officially and individually everywhere that the law had been ruined, and that they could not do anything—that the carriers could do just as they pleased; but despite that impression, which was so industriously disseminated by the Commission, the fact remains of about twenty-nine definite orders against carriers which the Commission has since made. Thirteen, I understand, have been fully complied with by the carriers, and four have been partly complied with, the Commission making no attempt to enforce these in the respects wherein they were not complied with. Four of them have been abandoned by the Commission—i. e., no attempt made to enforce them—and suits have been brought upon eight, one of which was dismissed by the Commission itself, one of which was decided against the Commission and no appeal taken, two of which have been decided by inferior courts, both against the Commission, and are now in the Supreme Court, and four of which are still pending and undecided by any court.

That is the situation since the decision of the maximum-rate case, in spite of the systematic campaign on the part of the Commission to convince the public and the railroads that they have no power at all.

Mr. RICHARDSON. That is substantially what the Commission has said here.

Mr. DAVIS. In point of fact they have not much power after that decision of the Supreme Court.

Mr. HINES. They can order the discontinuance of a rate that is unreasonably high or any undue preference between localities or persons or sorts of traffic.

Mr. RICHARDSON. How can they require, under that decision, a discontinuance of existing rates?

Mr. HINES. They simply order the carriers to cease and desist from charging the rates that they have declared to be unlawful. If the circuit court believes, when the matter comes before it, that it is lawful, it issues its decree that that order shall be observed. Then it remains with the railroad company to comply with it. Of course, there is a

theoretical argument that the railroad company may comply with it by making some merely technical compliance or reduction, but they have yet to point out a place where a railroad company has attempted to evade a compliance with an order in that way, and I think that it is scarcely reasonable to assume that responsible corporations who do not make it a business to invite unnecessary litigation would make a practice of such trifling with the court. At any rate, a fair trial should be given to that method which has been deliberately adopted by Congress.

Mr. MANN. Has there ever been any case where the Commission ordered a railroad company to cease and desist from charging a certain rate as unreasonably high, where the railroad company did that and put into effect immediately a rate just one notch lower?

Mr. HINES. I am not aware of any such case. I think I am safe in saying that wherever a railroad company has complied it has complied not only with the letter but with the spirit of the order, and that when it has not complied and when the Commission has had enough confidence in its order to go into court the court has sustained the decision of the railroad company that the order, on the merits of the case, was improper.

Mr. RICHARDSON. Then there is not much encouragement to give a tribunal like that additional authority.

Mr. HINES. Now, coming to the question of the evils to be remedied. I think it must be reasonably apparent from all that has been said before this committee that the real, tangible, serious evil is that of secret rebates or secret concessions and discriminations, and this rate-making power does not touch that subject. Mr. Prouty has stated that it does, that if you give the Commission this power to make tariff rates, that whenever it is satisfied that rates are cut it will reduce the tariff rate to the cut rate, and in that way will prevent cut rates.

Ever since the interstate-commerce act has been passed, and certainly since 1889, when it was amended, it has been the express duty of the Commission to enforce the law against secret discrimination and to see that offenders were prosecuted and convicted. There is an express and mandatory provision in the act to that effect. I do not recollect but one or two or three instances in all those years where the Commission has secured sufficient evidence to secure the imposition of even a fine of a few thousand dollars, and I submit that if, in the presence of that plain duty, the Commission has not secured sufficient evidence to impose a few fines, it is certainly most remarkable that you should go upon the theory that the Commission should be permitted to impose such a penalty as the loss of revenue amounting to millions of dollars on evidence which is not sufficient to procure the imposition of a fine of a few thousand dollars.

But not only would it have that effect upon the railroad company, of fining it, if the tariffs were reduced, but according to Mr. Prouty's plan it would result in a corresponding reduction on other railroads between the same points, and corresponding reductions between other points with respect to which there is some established relation of rates. Such a plan would be wholly impracticable, and if exercised would be without a vestige of a semblance of due process of law. To make one violation of law the basis for inflicting punishment of that sort in that indirect way, which can not be adequately reviewed in any shape

by the court—there is nothing that has ever come before a court so lacking in due process of law.

So that I say this rate-making power has no relation to the prevention of the one serious evil—that of secret rate cutting.

Now, coming to discriminations between localities or between sorts of traffic. They may exist, and of course to a greater or less extent do exist, but the point that I make is that under the present law there is a substantial remedy. To illustrate that, the third section prohibits any undue preference between different sorts of traffic. There has been much said here about changes in classification, I think about the beginning of 1900, and the impression has been created upon this committee, and I know was created upon the public at the time by the report of the Interstate Commerce Commission, that it had no power in the premises. Now, take hay, for example, which has been frequently referred to. If raising hay from the sixth class to the fifth class, after it had been in the sixth class for a number of years, destroyed the relation that ought to exist between hay and the other sorts of traffic in the sixth class the Commission had the express power under the present law to prohibit the continuance of that preference. So far it has not exercised it, although it has had that case long before it.

Mr. MANN. What is that provision?

Mr. HINES. That no carrier shall give any class of traffic any undue preference or subject any class of traffic to any undue prejudice.

In a recent case the Commission has proceeded upon the subject of classification under that provision. There was a complaint made about an improper classification of hatters' furs—of course a very small article of traffic—and it was claimed that it ought to be in the same class as certain other articles. The Commission held an investigation and found that the existing relation between hatters' furs and these other articles was improper and amounted to an undue preference, and they ordered its discontinuance, and, as I understand it, the carriers have complied with that order. So as to the discriminations between different sorts of traffic involving, of course, the question of classification, or between different localities, I say that the Commission now has a substantial power to stop any such discriminations for which any railroad company is responsible.

Mr. MANN. Do you claim that the Commission can order one kind of traffic to be taken out of one class and put into another?

Mr. HINES. It can not make an order in those terms, but if, upon investigation, it comes to the conclusion that that article is subjected to an undue preference as compared with other articles, when the Commission thinks it ought to have the same rates, it can order that the undue preference shall stop.

Mr. MANN. What kind of an order would that be?

Mr. HINES. That the carrier shall cease and desist from the undue preference found to exist in regard to this class of traffic.

Mr. MANN. That would not order anything. What would that order amount to?

Mr. HINES. If the court found upon investigation that the order was not unlawful, if the carrier could not convince the court that it was an unlawful order, the court would enter a decree to that effect and if the carrier affected should still fail to comply with that order

it would be fined \$500 a day, and also subjected, I believe, to any other penalties which the court might see fit to impose.

Mr. MANN. Would the railroad in the case of an order like that be required to change the classification or simply the freight rate?

Mr. HINES. You see the classification is simply the means by which all the articles of the same class are made to take the same rates. Now, if the railroad company changes a rate on an article, it necessarily takes it out of the class of the articles taking the old rate, so that it amounts to the same thing. Any change in classification simply means a change in rate.

Mr. LOVERING. Do I understand you to say that hay is all under one class, no matter what form it is put up in?

Mr. HINES. I was not going into details of the rates, but I understand that on many trunk lines hay has been in the sixth class, and I understand that all sorts of hay have taken the same rate.

Mr. LOVERING. No matter whether, from the form in which it was packed, 10,000 pounds or 50,000 pounds could be put in a car?

Mr. HINES. They probably have a minimum capacity to which the car has to be loaded before the carload rate can be obtained.

Mr. LOVERING. It is all in one class?

Mr. HINES. That is my understanding, in the trunk line territory. Now, the one other class of evils is the unreasonableness of rates in themselves. If there is an unreasonableness it can be substantially corrected, I think, in the way that I have pointed out.

Several years ago Chairman Knapp stated that he regarded excessive rates as practically obsolete. He now states that he thinks rates have not been much reduced in years. I do not understand that he now contends that rates are excessive. I do not understand that there is any substantial contention to that effect based on facts. Of course, instances can be pointed out where rates have been increased, and in 1900, I believe it was, when those changes in classification took place, numerous rates were increased. But I think we ought to regard it as pretty good evidence that the increases were not excessive, from the fact that the Commission has not seen proper, so far as I know, in a single instance to say that they were excessive, and to order the discontinuance of the changes in classification which appeared to result in excessive rates, if any existed.

Now, this plea as to excessive rates per se seems to fall back on the theory that the railroads are being consolidated, and therefore it will be in the power of a few men to impose excessive rates. The railroad consolidations are not a new thing. They have been in progress for a great many years. Many years ago, in various parts of the country, some one system has acquired control of the rates in a given territory. I do not understand that that has brought about increases of rates in those territories where, according to the theories that have been put before you, competition has been just as much stifled in those sections as it will be over the whole country if one system should get control now of all the railroads of the country. And I think I have some evidence of that in the matter of the New England situation, where a good many years ago, as I understand it, all the railroads became practically controlled by some community of interest. In 1895 Senator Chandler and Mr. Knapp, the chairman of the Interstate Commerce Commission, got into some correspondence on matters pertaining

to the duties of the Commission, and in the course of that correspondence Mr. Knapp said this to Senator Chandler:

In the New England States the process of absorption in one way or another has gone on until there is now practically no competition in the railway service of that section. So far as I am aware, this consolidation has not resulted in any increase in charges, but on the contrary has been attended by considerable reduction in rates, by improved facilities, and the better accommodation of the public. Fewer complaints come to us from that region than from any other part of the country. My observation and inquiries lead me to believe that there is less dissatisfaction with railroad charges and practices in New England than is found elsewhere in the United States, and that the people in that territory would not welcome a return to competitive conditions.

That is found in a letter to Senator William E. Chandler, dated Washington, October 17, 1895, published in Senate Document No. 39, Fifty-fourth Congress, first session.

Now, as I say, there has been no actual experience to support this theory that five men around a table in New York will, at their pleasure, increase rates in this country. I say that it is opposed to the reason of the thing, even abstractly considered. I do not know anybody who would as fully recognize their inability to deal with these matters as the New York financiers.

Mr. MANN. Is the Louisville and Nashville one of the roads that has been stated here to be in the Morgan syndicate?

Mr. HINES. It has recently been stated that Mr. Morgan now controls a majority of the stock of the Louisville and Nashville. I think Mr. Prouty added that to the Morgan roads.

Mr. MANN. Has Mr. Morgan ever attempted to fix the freight and passenger rates on the Louisville and Nashville?

Mr. HINES. I am not aware of any time when there has been any dictation from the New York office as to our traffic and passenger rates whatever. It is merely a business matter.

Mr. ADAMSON. If those five men should really assemble around a table to fix a rate, you do not think that they would attempt to establish anything like a homogenous and uniform rate throughout all the different parts of the country, do you?

Mr. HINES. I do not think they would enter upon the subject.

The CHAIRMAN. Would they know enough to fix rates?

Mr. HINES. I think they would realize that they did not know enough.

Mr. ADAMSON. Do you think it is practicable for any men to do it?

Mr. HINES. No, sir.

Mr. ADAMSON. Considering the vast stretch and extent of this country?

Mr. HINES. No, sir.

Mr. ADAMSON. In parts of the country where the railroads are so few and the country is as yet undeveloped, as, for instance, in the South and Southwest, would it not be damaging to the country for anything like an arbitrary fixing of rates to be resorted to?

Mr. HINES. I think so, and I propose to elaborate that a little further on.

Mr. DAVIS. I would like to ask, in that connection, if it is understood that we propose in this bill that uniform rates shall at one time and by one body of men be made to apply to all sections of the country and to be based upon the mileage, or does the law permit the Com-

mission to fix rates suited to the conditions of each and every section of the country upon evidence adduced before them?

Mr. HINES. I do not understand that any bill before the committee commands any such uniformity of rates. It gives the Commission discretion to make them as uniform as it thinks they ought to be.

Mr. DAVIS. You do not understand that the Commission would be bound because it fixed one rate in New England to fix the same identical mileage rate in Texas?

Mr. HINES. No, sir. It would be left to the pleasure of the Commission.

Mr. DAVIS. Nor do you understand that if they undertook to fix rates they would do it in one order?

Mr. HINES. No, sir; but they could do it.

Mr. DAVIS. If either the Commission or five magnates in New York, or any other body constituted by law or elected by capital, or self-elected by their own capital, should fix rates, and fix them on an elastic system and so as to have them different in different sections of the country, would there not be just as much room for discrimination there as in any existing condition?

Mr. HINES. I think so. And there is another point that I wanted to refer to in another connection.

Now, Mr. Knapp has stated to you that competition between markets is perhaps the most powerful factor in fixing rates, and that that will continue. There is no doubt that it will continue.

Another powerful factor on the subject is the fact that no business is as much dependent on the volume of the traffic as the railroad business, because I suppose there is no business in which fixed charges are so large, charges that have to be paid whether there is much or little traffic. Consequently there is a constant effort of the traffic managers to increase and develop traffic, and while there may be at times and from day to day variations in rates which may involve some increases, yet the constant tendency has been, and the experience has been, that the way to encourage and develop traffic is to make rates which will meet the commercial conditions, and the general result has been a general tendency downward, despite any exceptional instances of increases, and that tendency is bound to continue, no matter who controls the railroads.

Moreover, I think that even if it were reasonable to suppose that these five men in New York could fix the rates, even if we had evidence that they did fix, had fixed, the rates, or that combinations of railroads had increased rates, the rates which they would fix would be more subject to control by the courts than the rates which the Interstate Commerce Commission would fix. The law would give no presumption to the rates which would be fixed by the officers or by any combination of the railroad companies, whereas it would indulge every presumption in favor of the rates fixed by the Interstate Commerce Commission, and the most palpable evidence of the abuse of power would have to be made out against the Commission, while no such difficulty as that would exist with reference to the rate established by the railroad companies.

Now, as to the practical working of the matter and the practical extent of the power, I want to give just one illustration. I understand that the chairman of the committee asked Mr. Knapp about that the other day, and he said that he did not think that rates generally on

a system would ever be assailed because the rates were unreasonably high, and he seemed to regard that as a complete answer to the question. Mr. Knapp assumed that such general changes might be made as a result of complaints as to discriminations between different localities.

Now, if all the rates are changed it is just as serious, probably more serious to the railroad company, if the change is based upon an attempt to secure a different relation between different localities than if based upon the complaint that they are per se excessive. While it is admitted that in all the respects in which the Commission would exercise the rate-making power it would be a legislative power, perhaps the most peculiarly legislative attribute would be exercised in deciding relations between different localities.

If a rate is so low as to be virtually confiscatory, the court may intervene, but it is not so clear that a court could interfere in the absence of a showing of confiscation by the carrier simply because it disagreed with the Commission as to the proper relations which should exist between different communities. But in any event the Commission's rates, made upon a complaint of preference between localities, are just as important and far-reaching as if based on the claim that they are unreasonable.

Now, the case in which the Supreme Court decided in an elaborate opinion that the Commission had no power to make rates was the maximum-rate case.

In that case the freight bureaus of Cincinnati and Chicago complained that the rates from those points to certain points in the South were not unreasonable in themselves, but unreasonable as compared with the rates from Eastern cities. The Commission investigated the matter for some time, and then issued an order requiring some thirty-odd carriers operating from Chicago and Cincinnati to the South to make substantial reductions in their rates on all the numbered classes of freights, embracing, perhaps, 2,000 articles of freight from Cincinnati and Chicago to eight important cities in four of the Southern States, and added to the order that they should change their rates to other points in the South to correspond.

Now, if the Commission had had the power which it claimed, and the power which it is proposed to give it by House bill 8337, that order would have stood unless the railroads could have made a clear showing to the courts that there had been a palpable abuse of power by the Commission. If the order had stood, the rates on all traffic from Chicago, Cleveland, Cincinnati, Indianapolis, St. Louis, and all points in that country to all points in the South would have been materially reduced; corresponding reductions would have followed from Eastern cities to the South; there would have been, to some extent, reductions from points to the west of the Missouri River, and you have there a practical illustration of the almost unlimited extent which this rate-making power not only might assume, but which it has assumed and which it will assume.

Mr. ADAMSON. I have not studied the figures and schedules. Of course I could, but you are already familiar with them, and will you let me ask you a question right there?

Mr. HINES. Certainly.

Mr. ADAMSON. What is the fact with respect to the relative rates enjoyed by Atlanta, Galveston, New Orleans, Houston, Savannah, and other Southern and Southwestern cities, as compared with the same

rates from Eastern points to Western cities of equal distances? What is the fact about that?

Mr. HINES. Do I understand your question to be—

Mr. ADAMSON. Originating in the East, and going to the South or the West, equal distances, what is the comparative rate enjoyed?

Mr. HINES. I am not familiar with the precise rates, but in a general way I can say this: That rates in the trunk-line territory, the territory north of the Ohio and the Potomac and east of the Mississippi, are materially lower than rates in the South, due to the very much greater volume of traffic, and, in fact, on those lower rates I think it will appear that the roads in the North make more money than the roads in the South on the higher rates.

Mr. ADAMSON. Don't you think also that, in addition to the fact that they have a larger volume of business, it is a factor that they have older and better settled and stronger roads, and better facilities for handling freight and commodities?

Mr. HINES. That is true also. In regard to rates from Eastern cities to Southern points, the situation is affected also by the fact that in a great many instances all of the transportation, and in almost all instances some, if not most of it, can be performed by water. Goods can be shipped from Boston and New York and Philadelphia by coast-wise steamers, either to their points of destination, or very near there, where there will be a comparatively short rail haul, and that is a very material factor in the transportation from the Eastern cities to Southern points.

Mr. ADAMSON. You have perhaps observed what I have, that every city down there makes some complaint of discriminations as compared with other cities. What is your opinion, from your observation, as to the truth of that and the cause of it?

Mr. HINES. I do not know really of any serious complaint as between the Southern cities themselves. I know that the Western cities, some of them, complain of the Eastern cities that they have better rates to the South, but I think that that is a physical condition that can not be overcome, the Eastern cities having water transportation, which is the cheapest known.

Mr. ADAMSON. Now, is it not true that in the older sections of the country, that the stronger and better equipped roads, that the interest of the roads and the demands of business constantly tend to hold the freight down to a proper rate, and as to freight rates in the North, East, and parts of the West—

Mr. HINES. I think that is true.

Mr. ADAMSON (continuing). In the other portions of the country, where the rates are not so favorable, where roads are new and road-beds are not so good, and the country is not developed, is it not essential that the roads should have a little more freedom and latitude to strengthen themselves, not only for their own good, but for the good of the section through which they run?

Mr. HINES. That undoubtedly is true, and yet the interest of the road to develop traffic will of itself insure as low rates as may be accorded on the traffic. That is, in a new country the necessity is more than in an old country of developing new traffic and developing new industries.

Mr. COOMBS. Do the Commissioners have any trouble with this proposition, having the right to regulate commerce between the States?

Now, there is much commerce carried on within the State. New York has a long line of road, and I apprehend that the Commission—the Interstate Commerce Commission—would not have any right to interfere with the regulations of the State with reference to this. Now, is there any conflict between the rates they establish, or any disparity between the rates they establish, and the rates that are established, say, by the State commissions within the States?

Mr. HINES. It is entirely possible that those conflicts would occur, but I am not aware that they have any serious practical consequences, because the stress of railroad competition is such that everything has to adjust itself to the lower basis.

Mr. COOMBS. It resolves itself into a matter of competition, then?

Mr. HINES. Competition between different markets and different sections—

Mr. COOMBS. And the regulation of these matters between the States would be somewhat of a regulation by inference of rates and fares within the State?

Mr. HINES. Yes, sir; of course. Of course, if this affirmative power of regulation is given to the Interstate Commerce Commission, wherever there is a conflict what the Interstate Commerce Commission says would govern, because the law of Congress is supreme and everything done under it in case of conflict is supreme.

Mr. ADAMSON. If, either directly, by its own action, or by a delegated authority to the Commission, the Congress should embark in the business of fixing rates all over the country, and partisan considerations and politics should ever come into it, would not there be a still worse condition of affairs in reference to discriminations?

Mr. HINES. I think so, undoubtedly.

Mr. ADAMSON (continuing). Against such places as you are talking about now?

Mr. HINES. As it is now every railroad is bound in its own interest to take care of its own part of the country, and this power, if conferred on the Commission, would simply give it the authority, if it chose to exercise it, to tie the hands of the railroad and not let it do what it wanted to do for its part of the country.

Mr. COOMBS. The secretary of the Commission yesterday advanced this proposition with reference to the regulation of the matter of air brakes: He said that if the railroad was engaged in interstate commerce the Commission, or rather Congress, could regulate the matter of air brakes, so far as it pertains to the State itself, simply because it has general jurisdiction; it would have over the railroad authority, and it being engaged in interstate commerce, then they could go into the State and say what they should do with reference to these matters within the State.

Mr. HINES. I know that claim is made with a great deal of plausibility.

Mr. COOMBS. Now, if that claim is made and carried out to the logical consequence, could not they have jurisdiction over a company engaged in State commerce, and regulate them with reference to traffic and fares and freight as much as other matters?

Mr. HINES. There would be a practical regulation to a very great extent.

Mr. COOMBS. I am speaking of the legal proposition.

Mr. HINES. I think in a case of doubt the doubt would be resolved in favor of the Commission.

Mr. COOMBS. If one proposition obtains, does not the other necessarily obtain?

Mr. HINES. Yes, sir. I think so; one would follow the other.

Mr. DAVIS. You speak of giving the Commission arbitrary power. I want to know if what are known as freight associations or tariff associations, of which I believe there are several in this country, are not more arbitrary than a railroad commission would probably be if they had the power in fixing rates for the different sections of the country which they compel the railroads belonging to that section of the country to observe.

Mr. HINES. I do not think that is the case. In fact, these associations do not and can not exercise any compulsion. What they do, or rather what the railroads do who are members of such an association, they do only because it commands the approval of their own judgment. What they do is done with an intimate and intelligent knowledge of the demands of the country along their line of road.

Mr. ADAMSON. I suppose that Mr. Davis referred to its operation on the patrons of the road when he referred to its being arbitrary.

Mr. HINES. I so understood; and what they do they do with a view to encouraging and developing traffic, and every road has to try to care for its patrons and take care of its own interests.

Mr. DAVIS. I have so often heard the excuse given by railroads who have been asked for certain rates, both in freight and passengers, that they would be glad to do so and so if they were not prohibited from doing it by the rules of the association to which they belonged.

Mr. HINES. I do not think that that is the condition these days, but, of course, there is always the practical question which has always got to be considered with the railroad, that in what it does to develop its communities and tributary country it has got to bear in mind the question as to whether it may not encourage some unreasonable reprisal by some other road. It has got to be conservative, undoubtedly.

Now, as I suggested just now, you take what the traffic association may do. What they do is more subject to restraint by the courts than what the Interstate Commerce Commission may do. They do it with a knowledge of what the traffic demands, and what is necessary to develop it, but they do it with more responsibility to the requirements of the law than the Commission, because, as the Commission claims, it is practically the representative of Congress in the matter, and until it reaches the point of virtual confiscation of the property of the railroad the courts are not going to interfere with it.

It has been stated here a number of times that the Commission has never been overruled on the merits of a proposition; that the court has simply disagreed with them as a matter of law. I do not know that it is very important, but I think that a statement made so positively ought not to go uncorrected when it is incorrect.

As I stated in the outset, there have been only one or two cases in which the Commission has been sustained. It is true that in many of them the principal question involved was one of law, but there have been numerous cases in which the Commission's economic views and its views on the merits of the case have been most emphatically condemned by the court; and I have here a list of eight cases of special interest in that connection, just simply as dealing with the merits of

the questions coming before the Commission and involving economic principles of far-reaching importance. These cases are as follows: *K. and I. Bridge Co. v. L. and N. R. R. Co.*, 37 Fed., 567; *I. C. C. v. B. and O. R. R. Co.*, 45 Fed., 37; 145 U. S. *I. C. C. v. D. L. and W. R. R. Co.*, 64 Fed., 724; *I. C. C. v. Ala. Mid. Ry. Co.*, 69 Fed., 227; *I. C. C. v. L. and N. R. R. Co.*, 73 Fed., 409; *I. C. C. v. Lehigh Valley R. R. Co.*, 74 Fed., 784; *I. C. C. v. W. and A. R. R. Co.*, 88 Fed., 186; 93 Fed., 83 (affirmed by Supreme Court); *I. C. C. v. C. B. and Q. R. R. Co.*, 98 Fed., 173; 103 Fed., 249.

In what is called the import rate case in 162 U. S., the Supreme Court felt called on to make this quotation with approval from the English court:

I first observe that these are, in my judgment, eminently practical questions, and if this court once attempts the hopeless task of dealing with questions of this kind with any approach to mathematical accuracy, and tries to introduce a precision which is unattainable in commercial and practical matters, it would do infinite mischief and no good.

Now, I think that pretty clearly states what has been the attitude of the Interstate Commerce Commission. It has attempted to introduce mathematical precision and to determine by mathematical or fixed rules matters which can not be determined that way without serious detriment to the commerce of the country, and I think these cases just cited furnish corroboration of that statement.

It has been admitted before the committee by one of the commissioners that the Commission is a partisan body to some extent, and I think that grows out of the very nature of the tribunal, that it has so many different functions to perform that are incompatible with each other. It has considerable administrative supervision over the railroads, it is constantly coming into contact with them on that side, of controlling them in police matters and things of that sort, and I think it will be conceded that a person who occupies that attitude is not a proper person to assume a far-reaching, quasi-judicial jurisdiction over the corporation. Of course they say that this rate-making power is not judicial but legislative; but after all there is a judicial feature of it. They have got to say whether the existing rate is unreasonable, whether the practices of the company are lawful or not, and evidently a person who has that power ought to be absolutely free from bias, and I say that it is almost impossible to expect a man to occupy that position who is constantly coming into contact with the same parties in an entirely different capacity. They supervise all sorts of requirements. They are now calling on the companies to make very much more elaborate annual reports, which would impose a burden of \$1,200 or \$1,500 extra a month upon our company alone. Things of that sort cause friction, and they do not tend to give either party a judicial temperament in passing upon the rights of the other with what is practically final effect.

Mr. ADAMSON. I would like to ask you for an explanation. The greatest complaint I hear in my portion of the country about rates is of the common practice of charging cheaper rates to the larger cities than to the smaller intermediate towns. For instance, they complain that large cities, like New Orleans and Mobile and Montgomery and Atlanta, that they charge what is usually called the "basic" rate—a smaller rate—and then it goes up through the smaller cities until it is highest at the little country town half way between. I would like for

you to make an explanation to go into the record, so that the people will know why it is that that is done.

Mr. HINES. That is a considerable subject, and I can not make a very satisfactory explanation in the short time that I have. I will state it briefly. It simply involves the general long and short haul principle which has been repeatedly before the courts, and upon a full explanation then made the courts have almost invariably held that that practice of the railroad companies was proper. It rests upon this general principle—that the fixed charges of the railroad company, which are so large and must be paid, regardless of whether it does much or little business, are practically unaffected by an increase in the business, and that the railroad company can afford to take additional business at a very low rate rather than not take it at all, whereas if that same low basis were applied to all its traffic, it would have nothing with which to pay fixed charges. Say that a railroad has a certain local traffic that is on its lines, and it makes enough on that to pay its expenses—

Mr. ADAMSON. I understand that that system was first inaugurated on this basis, that there were certain basic points controlling, and that they fixed rates to them, and then the local rates were added to make up the rates to the intermediate points. Is not that the way it originated?

Mr. HINES. The rates at the basing points were not fixed by the companies. They were simply fixed by commercial conditions, as a rule. As a rule you will find that those basic points are places which have water competition and transportation, and in that way they had, before the railroads were ever built, enjoyed a certain scale of rates.

Mr. ADAMSON. Then the intermediate points had the local rates added?

Mr. HINES. The intermediate points were charged what were regarded as reasonable rates from the competitive points.

Mr. DAVIS. The basic point is usually the point of strongest competition?

Mr. HINES. Yes, sir; and as a rule has water competition.

Mr. DAVIS. The railroad company, because of that competition, hauls to the basis point at a figure which it could not afford to give to the noncompetitive points; is not that the fact?

Mr. HINES. That is the fact, but you will find almost without exception that that competition is not railroad competition; that it is competition due to other kinds of transportation, and that the railroad—no railroad—can control, so that the contingency that confronts the railroad is that it should either reduce its local rate, and therefore reduce its revenue when its present revenue is not giving it a reasonable return, or to increase its competitive rate and lose that traffic. It is very hard in a few minutes to give a full explanation of that, but, as I say, the courts have gone into it very thoroughly, and have, in the most unqualified terms, indorsed the position taken by the railroad companies on the facts presented to them.

Mr. ADAMSON. Is it also to any extent decided by the greater volume of business at those cities; is that any justification of that?

Mr. HINES. That might be worthy of consideration; but, after all, I think the reason I have given is the one that controls.

Mr. ADAMSON. Competition?

Mr. HINES. At these points the rates have to be made at that figure,

or the business can not move, and if you make rates on the same basis to the intermediate points, you simply cut down to a very low figure a traffic which does not pay a reasonable return on the property. I do not think there is any road in the South that has made anything like a reasonable return on its property on an average, say, for the last ten years, and if they had increased their competitive rates, or reduced the other rates, they would have been still worse off than they are now.

Mr. ADAMSON. You recognize that it is a fact that to just that extent that they do this, it operates against the growth of these intermediate points, because they can not compete in business with the larger ones?

Mr. HINES. Of course the railroad company can not control the fact that the long-distance point has generally additional facilities. Now, whenever it appears to the railroad company that the reduction of such a rate would increase the traffic so as to give it more than an offset to the losses it would incur you can depend on it that the railroad company would very quickly make that adjustment, because what it wants is to increase its revenue and its traffic.

Mr. ADAMSON. Would it be permitted to do that without a corresponding reduction to all the other similarly situated points on its line?

Mr. HINES. Of course that is to be considered. The railroad could not make any arbitrary distinction and pick out any one point and say, "We will go to work and build up a big business here." It would have to treat other points similarly situated in the same way, and so it would have to consider the reduction of all its local rates as against the probable increase of all local traffic.

Mr. MANN. I understand you to say that it might be a sufficient reason for giving a preference to one city over another that one city has a larger amount of traffic.

Mr. HINES. I say I think that is at least a partial justification, but I do not base it on that ground at all.

Mr. MANN. Do you think that a city which has a large amount of traffic is for that reason entitled to a lower rate than an adjacent city which has a smaller amount of traffic?

Mr. HINES. I do not think that a railroad company ought to make a difference in rates on that ground alone, and I do not think that it does so.

Mr. ADAMSON. I did not understand you to apply that to particular cities, but I understood you to say that the railroads could afford it because of their larger traffic in the older settled parts of the country?

Mr. HINES. Yes; and it may simply go toward explaining why the railroad company can carry a large amount of traffic at low rates without losing anything.

Mr. MANN. I did not think you wanted to stand by that statement, and that is what I understood you to say.

Mr. HINES. No, sir; I do not think the railroad company makes mere volume of traffic alone a basis for giving lower rates to those points.

Now, I want to refer very briefly to the fact that these orders which the Commission would make under this rate-making power would be practically free from any substantial legal review. There is a question of serious doubt as to whether a court, which is a judicial body,

could review all the questions of policy which the Commission might have considered in saying that a rate shall be so much instead of so much. I think that from a legal standpoint about all that the court could do would be to look at the effect of the rate on the business of the railroad company, and if the rate was not reduced so much as to amount to virtually what is regarded by the court as confiscation, I think that as matter of law it would have to let the rate stand as fixed by the Commission, and if the railroad company was unable to make such a showing, I do not see how any injustice which would result between different communities could be reviewed by the court at all.

But, aside from the legal proposition, there is this practical view of it, that the court will say, "This is the Commission's business; that is the tribunal to which has been confided the power of deciding what these rates should be; it has investigated the facts. We can not turn ourselves into an appellate railroad commission and go into this subject from top to bottom." And for that practical reason, aside from any question of legal power, I do not think that the courts would go into the matter except in cases involving a palpable abuse of power.

Mr. ADAMSON. The question of an existing rate being a judicial function and the question of a future rate being a legislative function, instead of allowing an appeal to a United States court upon the fixing of a future rate would it not be more proper to let it be referred to the next session of Congress?

Mr. HINES. Of course that would be a more logical method.

Mr. ADAMSON. And let the President himself ad interim bring them to a settlement—

Mr. HINES. But not a very practical method.

Mr. ADAMSON. Why not?

Mr. HINES. Because of the numerous cases of—

Mr. ADAMSON. Let them fix these rates and put them in force, and then if Congress blots them out at the next session, well and good.

Mr. HINES. And if Congress does not blot them out the railroad will be blotted out.

Mr. ADAMSON. You do not mean by your use of the word "confiscate," which you have used several times, that you think there would be any more disposition upon the part of the people to confiscate the property of the railroads than there is on the part of the railroads to confiscate the property of the public by establishing higher rates?

Mr. HINES. If you go back to the question of motive, I do not think that the motive exists on either side; but when you come to the practical effects, I think there is much greater danger that the Commission would, in attempting to put into effect its mathematical views, bring about that result in regard to the railroads.

Mr. ADAMSON. You do not contemplate that it would be the intention or wish upon either side to confiscate property?

Mr. HINES. No, sir; but it would probably be the effect.

Just one other point that I want to mention here. It has been stated, and reiterated as though it was something undoubted, that for ten years this Commission exercised this rate-making power without question. In 1887, a few months after the Commission was formed, a case came before it where there was some complaint about rates, and the Commission threw out the statement incidentally that the evidence was not before it to enable it to fix rates generally in the terri-

tory involved, even if it had the power, which it had not; that its power under the act was to say whether in such a case the rates were in conflict with the statute. I do not know what it meant, but it certainly did not assume that it had the power which it has since attempted to exercise when it changed the rates on 2,000 articles all through the South.

Mr. MANN. Will you not cite that case?

Mr. HINES. I will. I will put it in the record. (*Thatcher v. D. and H. Canal Co.*, 1 Int. Com. Com. Rep., 152.)

Again, in 1889 and 1890, Judge Jackson, in reviewing the orders of the Commission, intimated that the making of rates was not contemplated in the power of the Commission, and hence no discussion of the power of the Commission was necessary.

In 1891 in a Lehigh Valley Railroad case, in answering the order of the Commission, it was set up that the Commission had no power to make rates.

In January, 1892, the Commission made this statement in the case of *Perry v. The Florida Central and Peninsular R. R. Co.*:

Notwithstanding the Commission has held from the time of its organization to the present time that the statute requires it to ascertain and determine what the reasonable maximum rate is on a complaint alleging violation by reason of excessive freight charges, yet some carriers continue to deny the soundness of this view. (See III Interstate Com. Rep., p. 745).

That was in 1892, and the Commission's own statement, which I oppose to its present statement that its authority was not questioned for the first ten years. Early in 1893 the L. & N. Ry. Company made the point in the first rate case in which the Commission attempted to fix a rate. And in March, 1896, the Supreme Court held in that same case that the Commission had no power to make rates.

In that case the rate from Cincinnati to Atlanta was \$1.07, and the Commission, on the testimony of one witness who appeared before them and stated that a rate of \$1.01 was reasonable, reduced the rate to \$1.00 upon all the articles in the first class—several hundred of them—and the L. & N. very promptly, when the matter came before the court, raised the point that the Commission did not have the power to make rates.

Now, I think that furnishes some answer to the assertion which they make that everything went along so smoothly when they were making these rates.

Mr. MANN. Who rendered the opinion in that first case you referred to?

Mr. HINES. Commissioner Schoonmaker.

Now, what the Commission may have done when it was just starting out, and was rather tentative, and was going slowly, and what the railroad companies could have done as a matter of policy in complying with them, is no criterion at all as to what they would do now. The first rate the commission fixed was on wheat from a point in Washington Territory to a point in Oregon after a very elaborate investigation. In 1892 it got to the point, in the L. & N. case, of making a rate on several hundreds of articles from Cincinnati to Atlanta, and reduced the rate on the testimony of one witness, and reduced it more than that witness said was reasonable. Then in a year or so it got to the point where it made a reduction in rate on several thousand articles to all points in the South.

Now, I say that the action of the Commission at first is no criterion

as to what it will do now when it will take for its starting point what it did in the maximum-rate case.

I wish to submit that if the Commission once fixes these rates, and of course it will fix them, and it will fix a great many of them, especially in trying to readjust the relations between different localities—and of course every time it silences one complaint it will necessarily immediately start up another one by the other fellow—it will make a great many rates, and those rates will practically continue until the Commission sets them aside. While the bill says those rates shall be for only two years, as a matter of law they will, as a matter of fact, continue. Thus there will gradually pile up a set of rigid rates, minimum rates as well as maximum (in order to control the relations between localities), which will be a most serious discouragement to the railroads in the development of traffic; and I take it it will eventually get to the point where the railroad company must come here to Washington and consult the Commission before it can take a step to encourage the starting of a new enterprise on its line.

Mr. ADAMSON. If they are going to fix the maximum rate, would it not be better for them to fix the minimum rate also?

Mr. HINES. That would be just an additional restriction. Under the present law every tariff is a maximum and also a minimum rate. They have got to charge that sum, and it has been the duty of the Commission to make them charge that sum. It seems that they have not been able to do that, so that I do not see how they could, as a matter of fact, enforce minimum rates if they put them in; but the result would be that a system would be piled up where the railroad would either have to make secret charges in many instances to meet legitimate requirements or they would have to suspend things and come to Washington in order that the industrial development of their section should continue. That is one of the most important functions that the railroad practically performs. It is not the function of a common carrier, but it is a function that is performed by them.

Coming here on the Southern Railway the other day from Atlanta I was very much struck with the number of factories put up along the railroad in the last few years, largely if not entirely by reason of the activity of the Southern Railway in encouraging the establishment of industries on their line. The rates made to develop such industrial activity are legal and public. The railroad decides what is necessary, and gives legal notice and publishes it. If anybody is hurt he has his remedy; and that section of the country gets the benefit of the development. I do not know of anything in the railroad situation in this country which will justify the conclusion that the railroads have been so unsuccessful in the development of the resources of this country that the matter should be turned over to the Interstate Commerce Commission, when it is not necessary to cope with any tangible evil that now exists and when the necessary effect would be to put these constantly increasing restrictions upon the constantly increasing activities of the railroad companies.

Mr. MANN. Mr. Hines, you have written several articles upon that subject?

Mr. HINES. Yes, sir; a number.

Mr. MANN. Have you any copies of them here?

Mr. HINES. I have not them here, but I can very readily send them here.

Mr. MANN. Would it not be a good idea to have those go in the hearings here?

Mr. HINES. I beg pardon?

Mr. MANN. They are not very long?

Mr. HINES. Some of them are long. They are of various lengths. I might select some of the short ones.

Mr. WANGER. I understand you to say that Mr. Morgan did not cause the raising or lowering of rates upon the railway systems under his control?

Mr. HINES. I have never been aware of it, and have never had any reason to believe that such was the case.

Mr. WANGER. Do you think that he could not do it if he desired to?

Mr. HINES. I think that as a business proposition he would not desire to. He would not know enough about it to, and he would not attempt to give attention to the details necessary to pass upon a matter of that sort. The railroad is there, and that is the business of the traffic people, to develop the traffic so as to make it a paying institution; and a great many years spent in the management of the railroads of this country seems to have taught the traffic people that the way to increase the amount of the revenue is to increase the traffic, and that ordinarily they can only attain by charging reasonable rates; and there has been a constant downward tendency despite a few instances to the contrary. This matter is so important that there is a constant readjustment of rates to meet the conditions and to keep on encouraging the development so as to increase the volume of the traffic.

Mr. WANGER. Do you know of any instances of increased rates?

Mr. HINES. Yes, sir; I do. But I think that they are the exceptions and not the rule. I think you will find that there is a steady tendency downward, and that the change is in that direction. Of course, you can pick out cases where there are increases. There were numerous changes two years ago, but I do not think there has been any serious contention—there has certainly been no official statement—that those changes are unreasonable. The Commission had the power and the jurisdiction to prevent those increases, if they had thought them unreasonable; and while their unreasonableness may be suggested in their annual reports, they did not take the responsibility of saying so officially, so far as I am advised.

Thereupon the committee adjourned until Tuesday, May 27, 1902, at 10.30 o'clock a. m.

INTERSTATE COMMERCE COMMISSION'S PLAN FOR DEVELOPING WHAT IT CALLS A "POPULAR DEMAND" IN FAVOR OF ITS SCHEME TO REVOLUTIONIZE THE INTERSTATE-COMMERCE ACT.

In its long-continued and never-flagging campaign for revolutionizing the act to regulate commerce, the Interstate Commerce Commission now lays great stress on what it calls the "popular demand" in favor of the gratification of its desires. In some recent comments on the Commission's last annual report I stated that this so-called "popular demand" had been inspired, either directly or indirectly, by the Commission itself. Various interesting facts corroborate this statement

and indicate that the Commission seems to be devoting a large part of its energies to originating a "popular demand," otherwise nonexistent, to suit its purposes and to further its schemes.

A very recent example of this work is a letter sent out by the Commission, apparently to all parts of the country, dated February 3, 1900, written on its official letter head and signed by its secretary in his official capacity, designed to secure support for its pretensions. This earnest appeal assures the persons to whom it is addressed that Senate bill 1439, which embodies its desires, proposes to give the Commission merely the authority which Congress originally intended to confer upon it, and that it does not propose to invest the Commission with any general rate-making power.

Since under Senate bill 1439 the Commission may, in a single proceeding, on its own motion, fix maximum and minimum rates for every interstate carrier in the country on all the interstate traffic in the country, its claim that the bill gives it no general rate-making power is incorrect.

Since the voluminous debates of Congress, preceding and relating to the enactment of the act to regulate commerce, show conclusively that Congress had no intention of giving any rate-making power to the Commission, the latter's claim that the new bill is designed merely to give the power which Congress originally intended to confer is untrue. In many other respects also the new bill proposes to give powers of the utmost importance which Congress never intended to give to the Commission, and which would radically change the character of the law and the character of the Commission.

This remarkable document concludes as follows:

If the general features of this bill as above outlined meet your approval, it is respectfully suggested that you take action expressing your approbation and support to the Senators and Representatives from your state and to the Committee on Interstate and Foreign Commerce of the United States Senate and House of Representatives at Washington, either alone or with others, or by petition or otherwise. I would be glad to hear from you in respect to the matter, and would be pleased to receive advice of any action you may take, and copies of any letters, petitions, or other documents which may be forwarded to Senators and Representatives or either of the committees.

Very respectfully,

EDW. A. MOSELEY, *Secretary.*

It is not necessary to point out the various fallacies and errors in this unusual communication. It is desired simply to emphasize the fact that the Commission in its unreasonable desire for extraordinary powers is going beyond the limits of propriety and using its official position to secure support for measures calculated to gratify its own personal ambition, and that to this end it even goes to the extent of making misleading and unfair representations. Congress and the public should understand just what weight to attach to any apparent support for this measure which may in this way be developed, and may be assured that it is simply the result of a not unnatural compliance with the Commission's importunities on the part of people willing to gratify what is made to appear to them as a harmless, if unnecessary, request for power, and who assume that the Commission's representations are disinterested and reliable, when, unfortunately, such is not the case.

WALKER D. HINES,

Assistant Chief Attorney

Louisville and Nashville Railroad Company.

LOUISVILLE, KY., *February 13, 1900.*

THE FACTS AS TO PRESENT POWERS OF INTERSTATE COMMERCE COMMISSION AND AS TO POWERS PROPOSED BY SENATE BILL 1439—SUPPORT FOR LATTER BASED UPON MISUNDERSTANDING OF THESE FACTS, AND MISTAKEN IDEA THAT IT WILL CORRECT EVILS TO WHICH THE PROPOSED POWERS HAVE NO RELATION.

LOUISVILLE, KY., *April 12, 1900.*

Hon. SHELBY M. CULLOM,

*Chairman Senate Committee on Interstate Commerce,
Washington, D. C.*

DEAR SIR: At the hearings of your committee upon the bill now before it, proposing to give the Interstate Commerce Commission additional powers, and known as S. 1439, or the Cullom bill, there have been made numerous statements of a character calculated to create a radically wrong impression as to the present interstate-commerce law, as to the extent of the powers conferred by the bill in question, and as to the efficacy of those powers in correcting supposed evils. Wholly erroneous impressions seem to prevail in some quarters that the Commission and the courts are now without effective power over rates, and that the powers proposed to be given the Commission are not extensive or radical. The belief also seems to be widespread that granting these powers, which are practically unlimited and dangerous in the extreme, will in some way prevent rebates and other illegal concessions from tariff rates which are now believed to be frequently given in the interest of favored enterprises and to the serious injury of other shippers, when the fact is that those powers have no relation whatever to that evil, and can not possibly correct it or improve the situation. I therefore take this method of presenting to you and to the committee the precise facts on these points.

I. In its last annual report the Commission states that any railroad company can charge for its services whatever it pleases, and as much as it pleases, without any power in the Commission or the courts to prevent it. This was substantially reiterated by Chairman Knapp and Commissioner Prouty in their recent statements before the Senate Committee on Interstate Commerce. Commissioner Prouty added, in effect, that the Commission had no more control over railroad rates than it had over divine Providence, and said that the Commission had absolutely no power except that of an advisory commission, and less power of that sort than the advisory commission of Massachusetts. The impression has been industriously disseminated by and on behalf of the Commission that this state of affairs has been brought about by the unfavorable decisions of the Supreme Court of the United States.

These representations are so incorrect and misleading as to call for an accurate statement of the provisions of the present law and of the powers of the Commission and the courts under it.

The interstate-commerce act prohibits unjust and unreasonable rates, unjust discrimination in the performance of like services, undue preference in favor of any particular person, locality, or description of traffic, charging more for a short than for a long haul under similar circumstances, and pooling; requires all rates to be printed, posted at stations, and filed with the Commission, and prohibits charging any person a greater or less compensation than the published tariff rates. It makes any carrier violating its provisions liable in damages to the parties injured, and in addition denounces heavy penalties for its vio-

lation against the carriers, and against shippers obtaining less than the lawful rates. (Secs. 1 to 10, both inclusive.) A new section, added March 2, 1889, empowers the courts to issue writs of mandamus compelling any carrier to move interstate traffic for the party complaining upon the same rates, terms, and conditions as it does for other shippers.

Sections 11 to 20, both inclusive, relate to the Commission, its powers and duties. The Commission is given the most ample power of investigation; is charged with the duty of enforcing the act and keeping itself informed as to the manner in which the business is conducted; and is authorized to require any district attorney of the United States to prosecute, under the direction of the Attorney-General, all necessary proceedings to enforce the act and to punish violations of it.

These provisions give as complete power as can possibly be given to prevent the only evil which at this day is seriously charged or complained of, i. e., unjust discrimination in favor of trusts and combinations and other favored shippers by making, either directly or indirectly, illegal concessions from the published tariff rates charged the general public for like services. It is just as unlawful for the carriers to charge less than the tariff rates they fix themselves as it could possibly be for them to make similar concessions from tariff rates fixed by the Commission or by Congress itself. The temptation to violate is just the same, and it is just as easy and just as hard in the one case as in the other to prevent such violations. Under no possible scheme can they be punished except by producing competent evidence on which to convict; and if such evidence be produced, punishment will follow as surely under the present law as under any that could be devised. Those persons laboring under the delusion that such discriminations now complained of are due to the weakness of the present law, or that that weakness can be remedied by the Cullom bill, are simply the victims of skillful misrepresentations.

The only respects in which it is seriously claimed that the present law is insufficient, or in which substantial changes are proposed, are not at all the powers of the Commission and the courts to prevent illegal departures from tariff rates, but the Commission's power to change tariff rates which are in themselves illegal because unreasonably high in themselves or unjustly discriminatory between different localities or descriptions of traffic. It is as to these illegalities that the Commission proclaims most loudly that the railroads are absolutely without restraint either by the Commission or the courts. Yet (entirely aside from the undisputed power to award damages for violations of the law) the Commission and the courts have distinct, substantial, and effective powers to prevent these very evils.

Rates in general are very low in this country, and if any rate is too high it is out of line with the general rate adjustment, and therefore amounts to an unjust discrimination, and may be corrected as such, as will be pointed out below. But it may also be corrected when regarded purely as a rate unreasonable in itself. Any such unreasonable rate is a violation of the act. (Sec. 1.)

The Commission may hear complaints as to violations of the act, not only by a party having a direct pecuniary interest, but by any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, or by any State railroad commission. More-

over, the Commission may "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made." (Sec. 13.) Thus the Commission has unlimited power to investigate, at anybody's suggestion or exclusively on its own motion, any number of rates which are unjust and unreasonable, bringing before it as many carriers as it may choose. The scope of its inquiry has no limit but its own wishes, and its power to get all the facts is about as large as law can make it.

If the Commission finds the rates investigated to be unreasonable, and, therefore, in violation of the law, it is empowered to order the carriers involved to cease and desist from such violation. (Sec. 15.) This order may be enforced—not merely by any person interested, but by the Commission itself, if it so elect, at the expense of the United States—by applying in a summary way to the United States circuit court, which court shall on short notice hear and determine the matter speedily as a court of equity, but without the usual formalities of equitable procedure. The Commission's findings of fact shall be prima facie evidence of the matters therein stated, and if the court finds the order a lawful order, it is empowered to issue a writ of injunction or other proper process, mandatory or otherwise, enjoining obedience to the Commission's order. (Sec. 16.) Either party may appeal to the circuit court of appeals, and thence to the Supreme Court, but neither the appeal to the circuit court of appeals, nor to the Supreme Court, will supersede the judgment of the circuit court, so that if the circuit court enjoins immediate obedience to the Commission's order the carrier must obey it during all the time that its appeal may be pending. (*L. and N. R. Co. v. Behlmer*, 169 U. S., 644.)

Thus the act expressly authorizes the Commission to order a carrier to cease charging unjust and unreasonable rates, and requires the courts to enforce such orders when found to be lawful. This precise point has been recently recognized in *Int. Com. Co. v. C., B. and Q. R. Co.* (94 Fed. Rep., 272), where the court held on demurrer to the petition that in a proper case it would compel the defendant carriers to cease and desist from making charges which the Commission had found to be unreasonable and unjust. When that case came to be heard on the merits (98 Fed. Rep., 173), the court held the Commission was wrong in finding the rate to be unreasonable and unjust, but emphasized the right of the Commission to enforce an order of that sort in a proper case, saying it was entirely within the power of the Commission to require carriers to cease and desist from enforcing rates which the Commission found to be unreasonable and unjust, even though the Commission had no power to prescribe a rate.

Notwithstanding this power to prevent the charging of unreasonable rates, the Commission insists that the railroads are absolutely without control. But the power is precisely like that so effectively exercised by the courts to prevent the infliction upon carriers of unreasonably low rates. In *Reagan v. Farmers Loan and Trust Co.* (154 U. S., 363), the Texas commission was restrained from enforcing rates which were unreasonably low, the Supreme Court holding that while it had no power to fix the rates which the Commission might promulgate in the future, yet it would enjoin the enforcement of the unreasonably low rates already established. A similar power of restraint to protect railroad companies from unreasonably low rates was exercised in the *Nebraska maximum rate case* (169 U. S., 466).

Nobody disputes that the power thus exercised by the courts is an effective protection to the railroad companies against unreasonably low rates. It would be ridiculous to say that the power of the courts in these cases is merely "advisory," or no greater than the courts exercise over Divine Providence, and it is equally ridiculous to make the same statements relative to precisely the same power which the Interstate Commerce Commission and the courts can exercise to prevent unreasonably high rates.

Likewise every unjust discrimination between different localities or different descriptions of traffic is a violation of the act, and the Commission has similar power to order such violations to cease, and it is the duty of the courts to enforce the Commission's orders, if the courts find in fact that the practices in question are violations of the act. It was distinctly pointed out in the Maximum Rate Case (167 U. S., 506) that the Commission could enforce obedience to the law prohibiting such unjust discriminations between localities or descriptions of traffic. In the Social Circle Case (162 U. S., 184) an order of the Commission requiring the defendant carriers to cease from violating the long and short haul law was enforced, the courts approving the Commission's finding of fact; and in the Chattanooga Case (99 Fed. Rep. 52) the circuit court of appeals for the sixth circuit decreed the enforcement of the Commission's order forbidding the defendant carriers to charge higher rates from Eastern points to Chattanooga, Tenn., than to Nashville, Tenn., over the same routes, which rates the Commission had found to be unduly preferential and in violation of the long and short haul section. Whenever the courts approve the Commission's findings of facts that a rate adjustment constitutes an undue preference of one locality over another, or one description of traffic over another, that undue preference can and will be prevented for the future.

In *Interstate Commerce Commission v. L. and N. R. Co. et al.*, the United States circuit court for the southern district of Alabama, on December 2, 1899, decreed obedience to an order of the Commission which found the rates from New Orleans, La., to Lagrange, Ga., to be in violation of the first, third, and fourth sections of the act, and suspended the operation of this decree pending appeal only upon the carriers giving a heavy bond, and imposed the condition that the carriers should keep an accurate record of all shipments from New Orleans to Lagrange and report the same to the court every three months. If the higher courts affirm the judgment of the circuit court, substantial changes in the rates involved will have to be made. This is perhaps the latest refutation of the Commission's claim that neither it nor the courts can exercise any control over the rates of carriers.

Nor is the Commission confined to the procedure whereby it must afford a hearing, and make an order, and then file a petition to enforce that order. It can, instead, if it choose to do so, whenever any rate adjustment comes to its attention which it believes is in contravention of the act, immediately require any United States district attorney to bring suit in the name of the United States to enforce the act and to enjoin the continuance of such supposed unlawful rate adjustment. In such proceeding there is no necessity for any formal preliminary investigation by the Commission. (*United States v. Mo. Pac. Ry. Co.*, 65 Fed. Rep., 903.)

Therefore the Commission has effective powers to prevent unreasonable rates and undue preferences, given in express language by the act

and unequivocally confirmed by the courts, and yet the Commission persists in declaring to the public that railroad companies can charge whatever they please, without control; that its powers in regard to rates are purely advisory, and, as Commissioner Prouty puts it, that the Commission has just as much legal power to require Divine Providence to send rain and sunshine as it has to exercise any control over interstate carriers in the matter of rates! The fact is that the Commission has concerned itself so largely with attempts to do things entirely beyond the scope of the act that it has devoted but comparatively little time to trying to use the powers it really has, which powers, if exercised in good faith, with the view of enforcing the act instead of with the design of showing it not to be enforceable, are ample to secure the substantial correction of every tariff rate which may be unreasonable or unjustly discriminatory.

II. Equally misleading are the Commission's assertions as to the character and extent of the powers conferred by the Cullom bill. In its official circular letter of February 3, 1900, sent all over the country, requesting support and active work for the Cullom bill, the Commission stated that it neither asked nor desired to be invested with general rate-making power. Chairman Knapp stated to the Senate committee that the Cullom bill was very far from putting the fixing of rates under the control of the Commission (p. 101), and that the idea that it gives to the Commission the power to make rates for the railroads of this country is too absurd for discussion. Commissioner Prouty stated to the Senate committee that the Cullom bill gave the Commission no rate-making power in any usual sense of that term (p. 15), and that the power given was infinitely less than the power of the Texas commission (p. 17). On this point also a statement of the facts is essential.

Section 1 of the Cullom bill proposes to amend the long and short haul section by eliminating the words "under substantially similar circumstances and conditions," thus making the section an ironclad prohibition of every greater charge for a shorter haul, giving the Commission, however, the power to set aside the rule in special cases whenever it sees proper to do so. The courts hold that the carrier may now, on its own responsibility, charge less for the longer haul than for the shorter haul when necessary on account of controlling and unavoidable competition. (*Alabama Midland Case*, 168 U. S., 144, and *L. and N. R. Co. v. Behlmer*, 20 Sup. Ct. Rep., 209.) If in any case the Commission finds as a matter of fact that the competition is not sufficient to justify the charges made, it can order the carrier to desist from such adjustment of its rates, and the courts will enforce the order unless the carrier can satisfy the courts that the Commission's findings of fact are erroneous. (*Social Circle Case*, 162 U. S., 184, and *Chattanooga Case*, 99 Fed. Rep., 52.) The change proposed would at a single stroke wipe out every rate adjustment in this country involving less charges for longer hauls, based upon principles of competition, and would confer upon the Commission the absolute authority to say in every case when the less charge should be made for the longer haul. When it was contended that the original act had this meaning, the Commission, in an able opinion by Chairman Cooley, demonstrated that the section was not susceptible of any such construction and pointed out if any such construction should be placed upon it, the power and duty thus

devolved upon the Commission would be stupendous and impossible of performance. The Commission, through Chairman Cooley, after pointing out that the privilege to charge more for a short haul should not be interrupted in a case where it was proper, pending the slow processes of an investigation, said:

Moreover, an adjudication upon a petition for relief would, in many cases, be far from concluding the labors of the Commission in respect to the equities involved, for questions of rates assume new forms and may require to be met differently from day to day; and in those sections of the country in which the reasons or supposed reasons for exceptional rates are most prevalent, the Commission would, in effect, be required to act as rate makers for all the roads, and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect the relative rights and equities of rival carriers and rival localities. This in any considerable State would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman. A construction of the statute which would require its performance would render the due administration of the law altogether impracticable; and that fact tends strongly to show that such a construction could not have been intended. (In re L. and N. R. Co., 1 Int. Com. Com. Rep., 56.)

The power thus proposed to be conferred upon the Commission "to act as rate makers for all the railroads," and "to protect the relative rights and equities of rival carriers and rival localities," is to be exercised without any power whatever of judicial review; this "superhuman" task is to be performed by the Commission at its pleasure, and its decrees in the premises are absolute and final. If a carrier is guilty of undue preference between different localities, under the present law it may be prevented by the courts but if the Commission in the exercise of this tremendous power is guilty of undue preference, nobody can prevent it.

Yet Commissioner Clements, in his statement to the Senate committee on February 20, 1900, stated that the amendment to this section gave the Commission no powers in addition to those now conferred upon it in the present long and short haul section. (Page 21.)

Section 3 of the Cullom bill gives the Commission absolute power to prepare a national freight classification which must be invariably applied to interstate traffic by all the carriers in the United States. This section by itself confers the most extensive rate-making power, for the Commission can simply, by changing a commodity from one class to another, effectually and permanently increase or reduce the rate therefor, since under ordinary conditions the carrier can not reduce or increase its rates on all classes so as to meet such change. This power of the Commission can be exercised without any right whatever of judicial review, certainly so far as the original establishment and maintenance of the national classification is concerned. Under the present law, if a carrier establishes an unjust relation between two different sorts of traffic, such undue preference can be prevented; but if the Commission should under this provision so classify different articles as to give one an undue advantage over another, its act would be absolute and final until it was its own pleasure to make another change.

In a country of such wonderfully diversified industries and strikingly varied conditions, the relations of different sorts of traffic to each other necessarily differ widely in different localities. In one section an article may properly be in a given class at a given rate, and in another may properly be in a lower class at a lower rate. *There is no power to correct the injuries which may result from a lack of appreciation of these different conditions by the Commission.*

It may so classify an article as to suit conditions in Vermont, and apply the same classification with disastrous results in Arkansas. Its classification of certain commodities may permit their proper development in Florida, but the application of the same classification in California may be extremely injurious. Yet its action will be final.

Two factories, widely separated and on different railroads, may compete in a common market. The conditions may be such that the product may go to the market from one of the factories as first class and as third class from the other. This adjustment may be essential to the continued competition of the two factories. If the Commission see proper to make the traffic from both factories first class or third class, one of the other may be absolutely excluded; yet, no matter how great the wrong, the courts could afford no relief.

The Commission's classification will not apply to carriers by water, which make and will continue to make as many and as different classifications as they please. Rail lines attempting to compete with them must conform to the water classifications on competitive traffic or give it up. It would be wholly within the pleasure of the Commission to say in every instance, without any judicial restraint whatever, whether such competition shall continue or be destroyed.

Thus, under the classification section alone, the Commission will have a rate-making power whose importance over the commerce of the country can not be exaggerated, which it will be impracticable to discharge with anything approaching justice to every section of the country, and which it can exercise free from judicial restraint of any character.

In addition to these far-reaching rate-making powers, without even a pretense of judicial review, under the long and short haul and classification sections, the Commission is given direct and general rate-making power, without any limitations whatever, except those necessarily resting upon all rate-making commissions. Commissioner Prouty said that the power was infinitely less than that of the Texas commission, but a comparison with the Texas act of April 6, 1891, will show, on the contrary, that the Interstate Commission's powers would on their face equal, if they did not exceed, the powers of the Texas commission, and as a practical matter would be vastly greater and more difficult than the powers of the Texas commission, on account of the almost infinitely greater importance, extent, and variety of the interstate and foreign commerce of all the States and Territories of the Union as compared with the purely intrastate commerce of the single State of Texas. The Interstate Commission would have the same general rate making power, subject to substantially the same sort of judicial review. Neither commission could change rates except after notice and hearing, and upon such hearing both could and would change them upon precisely the same principle; that is, if either commission believed the existing rates reasonable, they would not be changed; if they believed them unreasonable, they would be changed. The Interstate Commission would have just as much power of initiative as the Texas commission has. It could institute inquiries exclusively on its own motion (sec. 13), and investigate in one proceeding as many carriers and as many rates as it chose. If it chose to summon all carriers in the country before it at one time, and proceeded to examine every rate and to change every one it thought necessary to change so as to make all rates reasonable and nondis-

criminating, it would not only be acting within its authority, but could say that the law required it, for the law prohibits unreasonable and unjustly discriminatory rates (secs. 1, 2, 3, and 4), and requires the Commission to keep itself informed as to how the carriers conduct their business, and also requires it to enforce the act. (Sec. 12.) The Commission is fond of minimizing this power by treating it as susceptible of very restricted exercise, and only upon complaint of some party actually aggrieved. Thus, in his recent statement before the Senate committee, Chairman Knapp said (p. 101):

It simply gives the Commissioners this power: If a complaint is made of a particular rate, and that complaint is investigated, on notice and opportunity to be heard, and every chance to disclose all the circumstances that are connected with that rate, if the Commission thinks that rate violates the law, then it can say what change shall be made in that rate or what rate shall be substituted.

But, as above pointed out, there are no such limitations on the power, and the Commission will certainly observe no such limitation in practice. The comments of the Supreme Court in the maximum-rate case (167 U. S., 479, 509) are strikingly applicable here:

There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. In this very case the order of the Commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati and Chicago, respectively, to several named Southern points and the territory contiguous thereto, so that if the power exists, as is claimed, there would be no escape from the conclusion that it would be within the discretion of the Commission of its own motion to suggest that the interstate rates on all the roads in the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order reaching to every road and covering every rate.

In the case cited the Commission changed the rates on over 2,000 articles in six classes of freight from Cincinnati and Chicago to eight important cities in four Southern States. Since there is a necessary interdependence between rates, this order if enforced would not only have correspondingly changed the rates from Chicago and Cincinnati to all other places in the South, but similar changes would have been necessitated from St. Louis, Evansville, and Louisville, in fact, every distributing point in that section of the country, and this in turn would have necessitated corresponding changes from competitive distributing points in the East, so that all the rates, at least on south-bound business, in practically all of the territory east of the Mississippi and in much of the territory west of it, would have been materially changed. It is safe to assume, if the Commission operated on such an extensive scale of rate making when it derived its power solely from a strained implication which was emphatically disapproved by the courts, that under the Cullom bill, with express power to do everything the Commission has ever tried to do, and a great many other things in addition, the grandeur of its operations will certainly not be diminished. It should be remembered, too, that no matter how sweeping are the Commission's orders, they are to be effective and carried out notwithstanding proceedings to review them, except when the court can say from a mere inspection of the Commission's record that an order is plainly unreasonable and illegal.

Yet the Commissioners still insist that the claim that the act gives the Commission any general rate-making power is "too absurd for serious discussion," and that the power actually proposed to be given

by that bill is "infinitely" less than the rate-making power of the Texas commission.

It has also been asserted by the Commission again and again that the Cullom bill is designed merely to give the Commission the authority which Congress intended to confer when the law was enacted. These statements are incorrect. Congress never intended to confer any rate-making powers. On January 18, 1886, the select committee of the Senate, after a most elaborate investigation, submitted a report of 216 pages with the bill, which, with some amendments, finally became the present law. In this report (p. 194) the committee declared that the fixing of rates by legislation was impracticable, and added:

Those who have asked the adoption of this plan of regulation have suggested the establishing of rates by a commission; but it is questionable whether a commission or any similar body of men could successfully perform a work of such magnitude, involving, as it would, infinite labor and investigation, exact knowledge as to thousands of details, and the adjustment of a vast variety of conflicting interests.

Clearly this committee did not regard the bill as prepared as giving the Commission the power to make rates. The Congressional debates also show that Congress had no intention to confer any rate-making power on the Commission.

Although the debates cover over 2,000 pages, all that was said that could be reasonably construed as bearing on the subject of making rates covers less than 30 pages; and even that bears on the subject only incidentally. This very silence of Congress shows that it had no idea it was conferring upon the Commission the power to make rates, which would have been a provision far more important than any provision actually adopted in the act. Moreover, Senator Cullom and Representative Reagan, who prepared and had in charge the Senate and House bills, respectively, disclaimed any intention to provide for fixing rates; others stated the same thing; and, although many enumerated the advantages of the Commission, none claimed that it would have the power to fix rates. A reading of the debates will convince any fair-minded person that Congress had no idea it was conferring upon the Commission the power to fix rates, and that no bill conferring such power could have been passed.

The Cullom bill seems not content with giving the Commission unlimited rate-making powers of the various kinds above referred to, which of themselves are sufficient to make it the traffic manager of every carrier in the United States, and to empower it to decree how far one locality shall compete with another, and what prosperity each section of the country shall enjoy. There seems to be a fear that the Commission may still wish to do something which would not come within these extensive rate-making powers, so the bill confers in addition some most remarkable general powers. The Commission is authorized to amend the rules and regulations under which traffic moves, and in general to prescribe everything which all interstate railroads in the country must do or omit to do for the future, so as to bring about conformity with the provisions of the act. These powers, in connection with the undue preference section alone, are susceptible of infinite development. If a carrier builds a switch to one industry, and unlawfully refuses to do so to another, the Commission may not only prevent the resulting undue preference (as it can do now), but, in addition, may itself decide whether the carrier shall tear up the switch it has built or, on the other hand, put in one for the other

industry, and may perhaps go further and prescribe the precise terms on which both switches (if it decree the maintenance of both) shall be thereafter operated for all time. The Commission may in an indirect way under these powers regulate the speed and the number of trains and the number of stops they may make. It may possibly fix the hours for the receipt and delivery of freight, and prescribe how many cars shall be furnished to each shipper. In fact, whenever the Commission says any practice is an undue preference, it may go ahead and make original and affirmative regulations in the premises to govern the carrier absolutely in the future, and unless such orders are on their face plainly unreasonable they will go into effect, even pending an appeal from them. To give any commission such powers of affirmative regulation over practically every detail of the operation of more than 180,000 miles of railroad is, of course, preposterous.

Such grants of unlimited power to make rates and classifications and rules and regulations as to every conceivable detail of transportation are utterly unnecessary and inexcusable. They would make the Commission beyond doubt the most powerful institution in our Government. No such powers should be conferred upon any set of officers under any circumstances. Present conditions furnish no pretext whatever for conferring such powers, for they have not the remotest relation to the one serious complaint of shippers, which is alleged giving of rebates and other unlawful concessions from tariff rates. All evils to which they can, by any possibility, relate are susceptible of substantial correction under the present law.

III. Thus the indorsements which the Commission has secured for the Cullom bill, and even those which have been given spontaneously, if there are any such, have been based on the widespread declarations of the Commission that the present act affords no protection to the public, which is untrue, and that the Cullom bill gives no general rate-making power, which is untrue, and merely gives the powers originally intended to be conferred, which is untrue. The Commission has for several years been industriously misleading the public on these points, and especially as to the efficacy of the present act. This can be explained, if not justified, on the idea that the Commission has been doing every thing in its power to pave the way for the gratification of its ambitions. Its members have their hearts much set on acting as traffic managers for all the railroads in this country, and additional legislation can be much more easily secured if it can convince the public that the present act is useless.

Shortly after the decision of the Maximum Rate Case, above referred to, where the Supreme Court held that the Commission had no authority to make rates, it decided the "Alabama Midland Case" (168 U. S., 144), and construed the long and short haul section contrary to the later views of the Commission, though strictly in accordance with the principles the Commission had acted on at the outset. With the display of much ill feeling toward the courts, the Commission proclaimed that the efficacy of the interstate-commerce act had been destroyed. In an interview at Washington on November 25, 1897, the chairman of the Commission declared that the courts had destroyed all of the Commission's usefulness, and that the Commission had no power whatever to enforce the law. In an article in the Forum for December, 1897, Commissioner Prouty implied very strongly that the Supreme Court had frittered away the rights of the people and had shorn the inter-

state-commerce act of the effective part of its powers, and even that the decision in the Maximum Rate Case was preposterous. In its next annual report the Commission announced that the courts, by their "discoveries and decisions," had given the act an interpretation contrary to the general understanding of its scope and purpose. (Eleventh Annual Report of the Interstate Commerce Commission, 1898, p. 6.) It declared and so reported in a case before it that under the construction of the Supreme Court—

The carrier is given the right to establish and change its rates independent of the judgment of the Commission, and independent of the action and judgment of any other court or tribunal; that the right to establish, demand, and receive unreasonable and unjust charges is not prohibited; and that in respect to the charges which may be demanded and received for any transportation service the carriers are made the judges in their own cases as to what is reasonable and just. (Ib., p. 14.)

The Commission was equally severe on the Supreme Court with respect to the decision of the long and short haul case. It said that the Supreme Court could not be said to have disapproved the Commission's views, because "so far as appears from a reading of the opinion the Court never took pains to inform itself what the position of the Commission had been." (Eleventh Annual Report, p. 42.) It declared that that decision eliminated the long and short haul section from the act. (Ib., p. 43.)

In its Twelfth Annual Report, 1898, on page 5, the Commission said with reference to these decisions:

The Commission has taken much pains to explain these various questions that have thus been decided, and the effect of these adjudications in defeating the purposes of the act.

The Commission has continued to "take much pains" to explain that the effect of these adjudications has been to defeat the purposes of the act, but there has been no indication that it has taken any pains to bring generally to the attention of the public the real status of the act, or the various decisions which have so clearly upheld the power to prevent the continuance of any rate which is in conflict with the act. In its Thirteenth Annual Report, 1899, the Commission seems to think that by "the pains" it has taken it has succeeded in convincing nine-tenths of the people that any railroad company can charge what it pleases without any power in the Commission or any court to prevent it, and possibly by reason of its long and persistent efforts a material portion of the public may be laboring under this radically erroneous conviction.

The Commission, however, has not confined its activity to statements in the newspapers, magazines, and in its annual reports.

One of the Commissioners drafted the bill which was introduced into the last Congress, and known as Senate bill 3354. The present bill (S. 1439) seems from Commissioner Prouty's statements before the Senate Committee on Commerce on February 20, 1900, to have been prepared in this manner: That "somebody," who had in charge a meeting of various commercial organizations to be held at Chicago, requested the Interstate Commerce Commission to present a bill for their consideration; that the Commission requested Mr. Prouty to prepare and send such a bill; that, in pursuance of the Commission's request, Mr. Prouty did prepare a bill and send it to Chicago, and subsequently he went to Chicago, at the expense of the United States, attended this meeting, and "answered such questions as he could."

It is to be presumed he told this meeting, as the Commission has so often announced officially to the public, that the Commission has no power to prevent unreasonable and discriminatory rates, and that the bill which he had prepared at the request of the Commission did not confer upon the Commission any general rate-making power; and perhaps said that the Commission, if invested with the powers desired, would have infinitely less power than the Texas commission has.

After the introduction of this bill, prepared as above shown by Commissioner Prouty, in accordance with the request of the Commission itself, the Commission sent throughout the country thousands of copies of this bill, accompanying it by what Mr. Prouty calls "letters of transmittal." This "letter of transmittal," which was on the Commission's official letter-head, and signed by its secretary in his official capacity, sought to make the impression that the bill was designed only to give the Commission the authority which Congress had originally intended to give it; that it did not invest the Commission with general rate-making power; that the bill must be enacted, because in no other way could excessive and unjustly discriminatory rates be prevented; that the shippers of the country were seeking the enactment of this bill; that the Supreme Court of the United States had misinterpreted the act so as to make it insufficient to give effect to its purposes, and it concluded with the suggestion that the recipient take action "expressing your approbation and support to the Senators and Representatives from your State, and to the Committees on Interstate and Foreign Commerce of the United States Senate and House of Representatives at Washington, either alone or with others, or by petition or otherwise," requesting that the Secretary of the Commission be advised as to what action should be taken, and be furnished with copies of any "letters, petitions, or other documents which may be forwarded to Senators and Representatives, or either of the committees."

Thus the Commission has not only promoted the cause of this bill by making in its official capacity misrepresentations as to the effect of the present law and as to the extent of the power proposed to be conferred by the Cullom bill, but it has been actively promoting the matter and actually directed the drawing up of the bill, which was actually drawn by one of the Commissioners, and since has in the most active and effective manner solicited support for the measure throughout the country.

When a permanent national commission, occupying so prominent a position before the public as does the Interstate Commerce Commission, repeatedly declares in its official capacity to the public that by reason of adverse judicial decisions it has been shorn altogether of the powers which are necessary to carry out the purposes of the interstate-commerce act, and in its official capacity urgently demands the adoption of certain amendments which it assures the public merely give it the powers which Congress intended to give it at the outset, and confer no general rate-making power upon it, and supplement these official declarations by active solicitations for support for its favorite measure, it is not surprising that numerous business organizations should be influenced by these circumstances, and, relying on the accuracy and good faith of the Commission's representations, should indorse the Commission's demands.

The extent to which the various organizations which have approved

the Cullom bill have been brought to do so by the solicitations, direct or indirect, of the Commission in its official capacity, or of the commissioners personally, or of the employees of the Commission, can, of course, never be known; but it is very apparent on the face of the indorsements, which have been procured by unusual activity on the part of somebody, that they are based upon the Commission's representations as to the facts.

One of the persons who is cooperating with the Commission most actively in this campaign, Mr. Frank Barry, stated to the Committee on Interstate Commerce on January 26, 1900, that the act had been stripped of its force and effect by the courts until it was worthless as a protection to the rights of either the shipper or the carrier, and that the Commission was merely advisory and of little practical utility (pages 4 and 5). Mr. Gallagher, another one of the Commission's coadjutors, stated at the same hearing that the Commission was merely advisory; that it might make an order, but it would be carried out or ignored entirely according to the wish of the carrier (page 17). Mr. E. P. Wilson, who appeared at the same hearing, stated that the Commission was absolutely without power to give any effective utterance or to lay down any effective rule (page 48), and stated further that nobody desired that the Commission should be clothed with the right to make the tariffs for the railroads, and that there was quite a distinction between doing that and allowing specific cases of difference to be investigated and a specific rate to be fixed after such investigation (page 50).

The National Association of Freight Commissioners, in their resolutions approving the Cullom bill, laid before the Senate committee at the same time, recite that the Supreme Court has so crippled the Commission's powers as to reduce it simply to a body for inquiry, whose rulings and decisions are without effect and unenforceable (page 58), and in a communication from the Quincy Chamber of Commerce and Quincy Freight Bureau, approving the Cullom bill, it was stated that recent decisions of the courts have shorn the Commission of its powers, and rendered its efforts and decisions null and of no effect, and that the Commission should be clothed with power to meet the necessities of shippers (page 59). Mr. Edward P. Bacon, who appeared at the same meeting, referred to an attempt to remedy a supposed discrimination against Milwaukee in favor of Minneapolis, and stated in effect that the Commission had advised that it would be utterly useless to carry the matter into the courts (page 68).

All of these gentlemen, therefore—in fact all of the persons who have been induced to express an opinion favorable to the Cullom bill—have evidently done so relying upon the representations of the Commission, and therefore without accurate information as to the present law and as to the scope and effect of the Cullom bill. Such indorsements, procured by such misrepresentations, are of course without force when the real facts are understood.

IV. The most remarkable feature of the Commission's campaign for the powers granted by the Cullom bill is that in some way a considerable portion of the public has been led to believe that the widespread rate cutting which is supposed to exist in this country is due to the adverse decisions of the courts, and that the granting of these powers is necessary to stop such rebates and other concessions from ~~tariff~~ rates, and will accomplish that result.

In its twelfth annual report (pp. 5 and 6) the Commission spoke in general terms of the decisions of the Supreme Court construing the act, and then proceeded to say in effect that these decisions had defeated the purposes of the act, and that the act could not be enforced, and that the amendments desired by the Commission were "positively essential." The Commission added:

Meanwhile the situation has become intolerable, both from the standpoint of the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each other, and shippers all the while in doubt as to the rates secured by their competitors. The volume of traffic is so unusual as to frequently exceed the capacity of equipment, yet the contest for tonnage seems never relaxed. Enormous sums are spent in purchasing business, and secret rates accorded far below the standard of published charges. The general public gets little benefit from these reductions, for concessions are mainly confined to the heavier shippers. All this augments the advantages of large capital and tends to the injury, and often to the ruin, of small dealers. These are not only matters of gravest consequence to the business welfare of the country, but they concern in no less degree the higher interests of public morality.

The natural conclusion drawn by the public was that the decisions of the Supreme Court had brought about the situation thus depicted, and that the grant to the Commission of the powers it desired would remedy that situation. The fact is that no decision of the Supreme Court has had any relation to the matter of illegal concessions from tariff rates, or tended in any degree to encourage such practices; and granting to the Commission even the unlimited rate-making power which it desires will not even tend toward the prevention or discouragement of such illegal practices. Nearly all the discontent with the present law rests solely on the fact that rebates and other concessions from tariff rates are not prevented, and that discontent has been skillfully made the basis of a demand for the most extensive imaginable powers for the Commission under the strange belief that those powers will correct such evils, when in fact those powers have not the remotest relation to those evils and can not have the slightest tendency to correct them.

Nearly every argument for the Cullom bill is based exclusively upon this false assumption. It is claimed that these secret concessions, which the Cullom bill is to stop, build up combines and trusts at the expense of the public, and, therefore, that the bill will be a great anti-trust law.

Mr. Gallagher, in his statement to the Senate committee, stated in effect that the object of the Cullom bill was—

To stop the payment of rebates, to stop underbilling, to stop false classification, to stop favoritism on lines of transportation, and to give the small shipper—the poor man—the right he is entitled to under the Constitution.

All the things enumerated by Mr. Gallagher are just as unlawful under the present law as they would be if the Cullom bill were enacted, and can be prevented just as easily now as they could be then. The Commission might, in the exercise of the power it would have under the Cullom bill, fix every interstate rate in the United States, and still there could and would be rebates, underbilling, false classification, and favoritism just as much as at present. There may be serious evils of this character—and a large portion of the public evidently thinks so—but that can not afford the slightest pretext for conferring upon the Commission powers of the most momentous character, which can not possibly tend to correct those evils.

It is possible that two of the incidental amendments embraced in

the Cullom bill will facilitate convictions for violations of the law in making such concessions and favors. These are the provision in section 4, amending section 10 of the present law, which authorizes a conviction simply by establishing the giving of a different rate from the published rate without requiring also proof that somebody was at the same time actually charged the public rate, and the provision in section 10 proposing to amend section 20 of the act, giving the Commission access to all the accounts of the carriers and authorizing the employment of special examiners to inspect those accounts. I am not advised that a single carrier in the United States is opposed to the adoption of these two amendments, and I know that the adoption not only of those amendments, but of any others that may be suggested which reasonably tend to the prevention of any and all departures from tariff rates, will be eminently satisfactory to the Louisville and Nashville Railroad Company.

But other provisions of the Cullom bill tend directly to encourage secret concessions from published rates. It repeals the provision of the present act that rates may be increased on ten days' notice and reduced on three days' notice, and prohibits any change in rates except upon sixty days' notice, authorizing the Commission, however, to allow changes upon less notice in particular instances or by general orders applicable to special conditions and species of traffic. If this alteration be made, reductions in rates, which may be imperatively demanded by commercial necessities, and which can now be made on three days' notice, will either have to be held in abeyance for two months, when perhaps the conditions requiring them will have disappeared, or a special dispensation will have to be obtained from the Commission, which will necessarily involve substantial delay, or a secret reduction will have to be made from the published rates. There seems absolutely no excuse for thus hampering legitimate reductions in rates, which sometimes have to be made on very short notice if they are to be available at all, and thus directly increasing the motives to violate the law.

Section 10 of the present act prohibits shippers obtaining unlawful concessions, false billing, or other fraudulent devices, and also prohibits their inducing or aiding or abetting a carrier to give them such concessions, and makes them liable in damages, severally or jointly, with the carrier to any party discriminated against. Section 4 of the Cullom bill repeals all these provisions except the single one of prohibiting the shippers obtaining unlawful concessions by false billing or other fraudulent acts; so that the trusts, combinations, and other favored persons who are now supposed to obtain concessions, and who can be punished therefor under the present act, would be without fear of any punishment under the Cullom bill, no matter how many rebates or other concessions they might induce and obtain, provided they did not do so by means of false billing and similar practices. Thus the very parties really responsible for these unlawful practices, and who profit by them, will be encouraged by this additional immunity to try more than ever to coerce such concessions from the carriers.

But these points are matters of detail with which the Commission is not seriously concerned. What it wants and urgently demands is the power to make rates. That is the sole purpose for which the Cullom bill is being pushed by the Commission, and that will not have the remotest tendency to remedy any part of the very serious evils supposed by many to exist to-day.

It may of course be said that there are unjust discriminations between different localities and different classes of traffic which could be corrected under the Cullom bill. All such discriminations are undue preferences and direct violations of section 3 of the present act, and can be prevented, as already pointed out, although the Commission, apparently from fear that such action might prejudice its obtaining the additional powers its members desire, has very carefully refrained from giving the public a correct idea of the powers which it could undoubtedly exercise under the present law to prevent unreasonable rates and unjust discriminations, and, on the contrary, has assured the public that the railroads are absolutely without any control in these respects.

We have, therefore, the very curious spectacle of a number of people indorsing the Commission's demands for the most extensive rate-making power imaginable when those indorsements are based upon a misunderstanding of the present law and a misapprehension of the extent of the rate-making power demanded, and a mistaken idea that it will in some way correct the evils now supposed to exist, and which these persons have been assured can not possibly be corrected under the present law, when in fact that power can not possibly reach the principal evil—unlawful departures from tariff rates—and the evil of inequality or unreasonableness of tariff rates is susceptible of effective regulation under the present law.

V. The proposition to revolutionize judicial procedure under the act by making the decrees of the Commission self-executing also deserves consideration.

The present procedure is outlined above in Section I. The Cullom bill proposes that the Commission's decrees, prescribing the precise things which the carrier shall do for the future, shall take effect and become perpetually binding upon the carrier unless within thirty days the carrier prosecutes an appeal to the circuit court, and even then the decree can not be superseded or suspended (except for an additional thirty days) pending the review by the courts, unless it plainly appears on an inspection of the record that the decree is unlawful or unreasonable. This would radically increase the Commission's powers and give it in effect the powers of an inferior court, although Commissioner Clements, in his statement before the committee, stated that the section making this provision conferred no new power on the Commission, but simply amended the procedure in the courts (p. 22).

The select committee of the Senate, above referred to, on page 214 of its report said:

Unless the Commission itself be constituted a court, which the committee does not consider expedient, the final determination of all contested proceedings instituted under any laws that may be passed by Congress must rest with the courts of the United States.

Under the Cullom bill the order will be just as final as the order of any other inferior court. There will be a right of appeal, as there is from the judgments of other inferior courts, the right to supersede the judgment of the Commission being, however, seriously restricted.

No reason for making this radical change, which is of such doubtful constitutionality, exists.

About the only argument advanced in favor of it is the delay which has been heretofore experienced in enforcing the orders of the Commission, but there is no reason to believe that the same causes of delay

will arise in the future. Up to the present time the judicial procedure under the act has not had a fair trial.

It has been invoked largely in cases where the Commission has assumed to adopt very narrow and unreasonable views as to the duties of carriers and very latitudinous and unreasonable views as to its own authority under the act. Judicial construction of the disputed points, which were of the most vital character, was necessary, and it took time to get final determinations by the court of last resort. Because, under these circumstances, delay has resulted from the Commission's proceeding upon extravagant theories as to its power, which theories the courts have at last disapproved, is no reason whatever for giving the Commission vastly greater power by permitting it to issue decrees which shall take effect without any resort to the courts at all, and which shall even go into effect notwithstanding an appeal by the carriers to the courts, except in extraordinary cases. When the Commission confines itself to making lawful orders and ceases the assumption of powers which have never been conferred upon it, there will be much less occasion for contesting the Commission's orders, and much less delay when contests are made.

Another very important reason why the Commission's decrees should not take effect in advance of any judicial determination that they are proper is that in the event they are ultimately found to be improper the carrier will be utterly without any relief, whereas, of course, the shipper will have his remedy if the Commission's order be upheld. It is true the latter remedy may not be perfect, because the person who would recover back a portion of the rate might not in some instances be the one who had paid the rate in the first instance, but it is better to adopt a course where a wrong may be at least partially remedied than to adopt one where it will be utterly without remedy.

Moreover, interests are involved much more extensive than those of the particular shippers directly involved. There is a universal interdependence of rates in this country, a change of one rate involving or affecting rates on other commodities and other sections of the country, and it is of the very highest importance that the established order of things should be preserved until it is found to be wrong by a tribunal of a judicial character.

Although the Commission has judicial functions of the very highest importance, it is not only not a court, but it has so many incompatible functions to perform that it can not be a judicial or an impartial tribunal. The Commission has extensive administrative supervision over many details of interstate transportation. It has the power, and it is its duty, to inquire into violations of the act to regulate commerce, and for that purpose to bring before it witnesses and books and papers. It can then call on the United States district attorney to prosecute such carriers, or their agents, as it may find violating the law. It may then, relative to the same subject-matter, institute a complaint on its own motion before itself and proceed to hear and determine that complaint, conducting the case on its on behalf before itself. Thus it is supervisor, detective, prosecutor, plaintiff, attorney, and court. No tribunal charged with such functions can have the attributes which ought to characterize a judicial tribunal. In addition to these varying functions, which are conferred upon it by law, its members have for some time assumed in a more or less active capacity the business of promoting legislation which would give the

Commission greater powers, and the Commission has recently been extremely active in this work in its official capacity, and actively soliciting support for the amendments it desires. At this time it seems that Mr. Frank Barry and Mr. Augustine Gallagher, and perhaps others, who are the representatives of important milling interests in whose behalf the Commission recently rendered a favorable decision of far-reaching importance, are now most actively cooperating with the Commission in trying to secure for the Commission the additional powers which it has been trying so long to obtain.

Under these circumstances it is most earnestly submitted that the Commission ought not to be given the power to render decrees which may become effective without any resort to any court for a judicial determination as to their propriety. To give such power would be to reverse entirely the principles of the act to regulate commerce, not only without reason, but in the face of the strongest reasons why it should not be done.

By way of recapitulation it may be said:

First. The claim that the Commission and courts have no power over rates at present, and that the railroads may fix them free of control, is untrue. On the contrary, the continuance of a rate which is unreasonably high or unjustly discriminatory can undoubtedly be prevented by the Commission and the courts under the act as it stands.

Second. The claim that the Cullom bill confers only the powers which Congress intended at the outset to give the Commission and confers no rate-making power is untrue. On the contrary, the change in the long and short haul section and the sweeping power to apply all over the United States a classification made by the Commission confer two distinct rate-making powers of the most far-reaching character, which are without even the semblance of judicial restraint. In addition the bill confers a direct and general rate-making power to fix all rates which fully equals that of the strongest State commissions. The Congressional records show that Congress, after prolonged investigation and mature consideration, reached the conclusion that the extent of the country and the vast variety of conflicting interests made it unwise and impracticable for rate-making powers to be given the Commission, and that Congress never intended to give it any rate-making powers at all.

Third. The Commission has actively put before the public in many forms the claims referred to in paragraphs 1 and 2, and which have been shown to be untrue. The present Cullom bill was prepared by its direction, and it has solicited support for it in its official capacity, renewing the incorrect representations theretofore made by it, and whatever support has been obtained for the measure has been based upon this misinformation.

Fourth. Nearly all the support which has been developed in favor of the powers desired by the Commission is based exclusively upon the radically false assumption that the exercise of those powers will stop illegal departures from tariff rates for the benefit of favored enterprises, when in fact those powers have absolutely no relation to such violations of the law and can not possibly be so exercised as to prevent or affect them.

Fifth. The purpose to make the Commission's decrees self-executing is likewise a radical departure from the whole scheme of the original act, of very doubtful constitutionality, and entirely without reason to

support it, and the incompatible character of the various duties of the Commission and the other functions which, though not duties, it has actively assumed to exercise, such as soliciting support for legislation in its favor, deprive the Commission of a judicial or impartial attitude and render it extremely inexpedient to permit its decrees to go into effect before they are passed upon by some really judicial tribunal.

In general it may be said that the Commission is actively seeking to promote legislation which would confer upon it virtually unlimited rate-making powers; powers which it is utterly impossible for a single commission to exercise intelligently in a country so large as this, and which at the same time would make it not only the traffic manager for each of the railroads of the country, but also the apportioner of commercial and industrial prosperity among all the localities of the country. The Commission's course in the past indicates that with its peculiar ideas of giving each place the benefit of its own natural advantages it would disregard the rights of localities which by exceptional enterprise have overcome natural disadvantages, and would directly encourage the centralization of industries at a few points which the Commission might regard as the points having the greatest natural advantages.

There is not sufficient space in the present article to do more than refer to this dangerous feature of the Commission's demands. But that they are of the most dangerous and far-reaching character is apparent, and these demands are being pushed by the Commission, composed of ambitious gentlemen who have set their hearts on securing rate-making powers of the most extensive character, and who, to accomplish their purpose, have systematically, both individually and as a Commission, created erroneous impressions as to the existing situation and the character of their demands, and as to the evils which the granting of those demands would remedy. When these misrepresentations have been corrected, the whole foundation upon which the indorsements of the Commission's demands have been placed will be swept away.

Respectfully submitted.

WALKER D. HINES,
Assistant Chief Attorney,
Louisville and Nashville Railroad Company.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
OFFICE OF ASSISTANT CHIEF ATTORNEY,
Louisville, Ky., April 23, 1900.

Hon. SHELBY M. CULLOM,
Chairman Senate Committee on Interstate Commerce,
Washington, D. C.

DEAR SIR: I have only succeeded in seeing to-day a copy of the hearing of the 13th instant before your committee, and of reading what Mr. Prouty had to say on behalf of the Interstate Commerce Commission's demands. While not desiring to repeat my former discussion of this matter, I wish to respond as briefly as possible to some of Mr. Prouty's remarks.

Practically all the support which has been secured for the pending bill has been based on the assumption that the existing law has been

so construed by the courts as to deprive the Commission of the power to prevent rebates and other forms of favoritism resulting from secret concessions from tariff rates, and that this bill restores to the Commission the requisite power to prevent that evil. The opponents of the bill have denied that any of the decisions of the courts have in any wise impaired the Commission's ability to prevent this evil, and have denied that this bill relates to that subject at all, except in incidental details to which the railroads have no objection, and have asserted that the rate-making power to which the bill is principally devoted will have no tendency whatever to correct this evil. This, then, is the issue of first importance. Mr. Prouty seems to recognize it, and states in effect that unless he can show that the rate-making power conferred by the bill will enable the Commission to materially stop this evil, he will not ask the committee to favor the bill.

Departures from tariff rates have always been the greatest evils of the traffic situation. They were undoubtedly one of the principal inducements to the passage of the interstate commerce act. They are prohibited in the most explicit terms and under very heavy penalties. By section 12 of the act it is the duty of the Commission to keep itself informed as to the manner and method in which the business of all carriers subject to the act is conducted. To that end it is given practically unlimited powers of investigation. It is required to execute and enforce the act, and it is made the duty of any district attorney of the United States, to whom the Commission may apply, to institute and prosecute under the direction of the Attorney-General all necessary proceedings for the enforcement of the act and for the punishment of all violations thereof. The correct conclusion would therefore seem to be that it is one of the main functions of the Commission to inquire into this very evil of rate cutting and to see that every violation of the law in this respect is prosecuted. This view, however, is distasteful to the Commission. According to Mr. Prouty, the Commission's idea seems to be that if in the general administration of the act it happens to hear of any departure from tariff rates it "may" call the Attorney-General's attention to the fact, but that the Commission itself has nothing to do with the prosecution, and the Commission evidently deprecates the idea that it should be regarded as a detective.

As a result of these views, the Commission's efforts to enforce the most important and salutary provisions of the law seem to have been hardly more than nominal. Besides employing one man, who has acted "in a measure" in the capacity of a detective of such violations of the law, the only other efforts Mr. Prouty speaks of are a three days' session of the Commission at Chicago, a two days' session at Portland, Oreg., and a session at Minneapolis, duration not given, at which the Commission inquired if anybody had violated the law. These efforts seem to have satisfied the Commission that it is impossible to stop the payment of rebates by the imposition of fines and penalties, and apparently the Commission has rested from its labors in that direction.

Mr. Prouty says this bill will improve the situation in two ways. First, by giving the Commission power to prescribe the form in which railway accounts shall be kept and to examine the books of railways by special agents. It is admitted that this power might tend toward improvement, and the railways are perfectly willing that the power

should be granted. Since, however, the Commission does not regard itself as especially charged with the duty to detect or prosecute any such violations of the law, has made such small efforts in that direction, and does not seem to enjoy that sort of work, it would be rash to hope for any effective work in this direction in the future simply as the result of a very slight enlargement—hardly more than nominal—in the Commission's powers of investigation. Mr. Prouty says he has very little confidence in prosecutions being facilitated by the removal of the imprisonment feature. His conclusion evidently is that the railroads will continue to try to conceal their violations of the law, and that shippers will still be unwilling to give information, and that the discovery of the facts will be about as difficult in the future as it has been in the past. Of course, after all, it is exclusively a question of getting at the facts. If the facts can be obtained, the penalties can be enforced, and if the penalties are enforced rate cutting will be stopped.

Mr. Prouty seems to stake his right to ask the committee to approve his bill entirely on another reason. He says there is nothing that will stop the payment of rebates as a general proposition "except the power on the part of this Commission, or somebody else, when satisfied that one man has a preferential rate, to compel the carrier to give everybody else the same rate," and he says that with the rate-making power the Commission can and will do this, and will apply the same low rate to all intermediate territory. This sounds very simple and conclusive. A reduction of a million dollars in the carrier's revenue by making it give everybody the preferential rate it gives to one man by way of rebate will, of course, be a more terrible remedy than several fines of merely a few thousand dollars each, and no doubt if the tribunal charged with requisite power should, "when satisfied that one man has a preferential rate," impose this penalty of such a loss of revenue it would stop rate cutting in a hurry; but Mr. Prouty forgets to tell the committee how the Commission is to be "satisfied" that the one man is getting the preferential rate and what preferential rate he is getting. Due process of law is the fundamental principle of our Government. Legislative bodies are not in the habit of providing that persons or corporations shall be deprived of their property merely because some tribunal is "satisfied" that that person or corporation has done something wrong unless that "satisfaction" is arrived at upon legal evidence and in a judicial manner. No one will dispute that the penalty which Mr. Prouty proposes to inflict upon the carriers of the country will be much more formidable than the penalties of the present law or the penalties of the pending bill. Does Mr. Prouty, therefore, expect that railroads, which he says now withhold all information, will, for the purpose of subjecting themselves to infinitely increased penalties, cheerfully tell him about their misdeeds, or that shippers, who are unwilling to be responsible for subjecting the carriers to present penalties, will rush to him to give evidence which will result in far heavier penalties? Obviously Mr. Prouty has no such anticipation.

His idea is, although at present his Commission can get no evidence upon which to base a prosecution so as to take even a \$5,000 penalty from a carrier for violation of the law, that in an indirect way, under the pending bill, his Commission, which is not a judicial tribunal at all, is going to be able to impose vastly greater penalties without legal evidence. Perhaps the Commission will see in a newspaper that some

traffic is moving at less than tariff rates. The Commission will investigate, and, unless it is more efficient than it has been in the past, will disclose absolutely no evidence to sustain that allegation. Nevertheless, the Commission will still be "satisfied" that the report is correct, and, therefore, without any of the forms of law and without the shadow of legal evidence, it will impose upon the carrier a vastly greater penalty than Congress ever authorized even the courts to enforce after the clearest proof of violation of the law. Mr. Prouty's argument can amount to nothing else, and it throws a startling and unexpected light on the purposes of the Commission. Mr. Prouty does not work out this conclusion to its logical results, so we are left in doubt as to what the Commission would do under all circumstances. Suppose the Commission is "satisfied" that there is rate cutting on grain between Chicago and New York. It will straightway inflict an enormous penalty on all carriers doing business between Chicago and New York, whether they all engaged in rate cutting or not, by enforcing an open rate on grain, not only from Chicago, but from every intermediate point to New York, substantially lower than the existing rate, against which, in itself, there is no complaint. Whether the Commission will confine itself to reducing the rate on grain, thereby disturbing the due relation between grain and every other description of traffic, or will bring about harmony by inflicting corresponding reductions on everything else is not explained. But, in any event, the punishment can not be confined to the Chicago-New York carriers at fault, or even to those law-abiding carriers, if any, so unfortunate as to do business between the same points. If carriers carrying grain to other markets keep up their rates, markets on their lines will be very seriously prejudiced to the advantage of New York, and so will all intermediate points be prejudiced to the advantage of points between Chicago and New York, all of which will be rejoicing in the benefits flowing from a violation of the law. On the other hand, if these lines to other points, in order to retain a share of the business, meet the reduction which the Commission has decreed as the penalty for rate cutting between Chicago and New York, then perfectly innocent carriers in nowise participating in the illegal rates complained of will be made to suffer the most stupendous losses.

Instead of Congress adopting at the outset a measure giving the Commission the right to inflict widespread ruin upon the carriers whenever it is "satisfied" that one of them is violating the law, it will be equally as much in accord with the spirit of the Constitution for Congress at least by way of experiment to provide that the Commission may make any given carrier pay \$1,000 or \$5,000, or any other fixed sum, for every time the Commission is "satisfied" that that carrier has given a rebate, and will be infinitely more just to innocent carriers and less disastrous to persons who have invested their means in railroad properties.

Mr. Prouty's patent for stopping rebates will surely not commend itself to the committee.

On the other branch of this general subject, i. e., the prevention of tariff rates unreasonably high or unjustly preferential, Mr. Prouty's statements seem to be a reiteration of what he has heretofore said on that subject. It is interesting to note, however, that Mr. Prouty, on behalf of the Commission, practically repudiates the amendment to the fourth section, and says it is of doubtful expediency to attempt to modify the

existing fourth section. No one will deny that that amendment involves the most far-reaching consequences. Yet, although the Commission did not approve it, it has earnestly solicited shippers all over the country to support the bill embracing that amendment.

In my argument before the committee I stated that the power of the Commission and the courts to prevent railroads from charging unreasonably high rates was precisely the same as the power exercised by the courts to prevent State railroad commissions from enforcing unreasonably low rates. With that wonderful adroitness as an advocate which Mr. Prouty's service as an Interstate Commerce Commissioner seems to have developed, he tries to create the impression that the cases are not parallel because, pending litigation, a State commission can not enforce its unreasonably low rate, while the railroad can enforce its unreasonably high rate. He implies that in the Reagan case the railroads were not compelled for one moment to put in the obnoxious rates. The fact is that those rates were actually put into effect and remained in effect for four months after the railways had brought suit to enjoin this further continuance, and their further continuance was only enjoined after the court had become satisfied that they were unreasonably low and should be enjoined. The further continuance of an unreasonably high rate can, in precisely the same way, be enjoined at the very same stage of the proceedings, i. e., just as soon as the court becomes satisfied that it is unreasonably high and should be enjoined. If the circuit court decrees the immediate enforcement of the order of the Commission, the carrier can not supersede that decree by an appeal. Mr. Prouty's statement, therefore, that under the present law in no way can a railroad be forced to put in a rate which is unreasonably low, and in no way can it be forced to take out a rate which is unreasonably high, is equally and wholly incorrect on both propositions.

Mr. Prouty insists that, even if the continuance of the unlawful rate adjustment be enjoined, this will afford no relief, because the carrier will make no substantial change in its rates. In this Mr. Prouty is simply theorizing, and theoretically at least he seems to condemn theorizing. The interstate-commerce act provides a certain procedure for correcting evils. Until very recently the Commission has never acted in accordance with that procedure. Recently it has, in a few cases, confined itself strictly to making the orders which the act authorizes it to make, but in only one of those cases has the circuit court found the Commission's order to be correct, and in that case the court saw proper to suspend the operation of its decree pending appeal. A case, therefore, has never yet been presented to test the practical efficacy of the preventive power which the Commission, in connection with the courts, can exercise under the present law, and yet, simply on the theory that such power when carried into effect will not be of substantial value, the Commission asks Congress to give it powers which are virtually unlimited. We earnestly submit that Congress ought to do no such thing until the powers which the Commission undoubtedly has shall have been fairly tested. The fact that thirteen years have elapsed without an adequate test of those powers is not due to any fault of the act or of the carriers, but it is due to the fact that the Commission has made the most egregious mistakes as to the extent of its powers, and has systematically continued to attempt to exercise an authority which it did not possess. As heretofore suggested, the Commission seems to be in a great hurry to get the new powers which it wants for fear that

delay may develop that the powers it already possesses afford substantial protection to the public. That the existing powers, when properly exercised, will afford ample protection against unlawful tariff rates seems clear. Congress evidently thought so when it passed the present act, and nothing has since occurred to disprove it. The Commission's course has been such as to afford no test at all.

Mr. Prouty insists that under this bill the effect of every order can be suspended while proceedings in review are going forward, and he implies that no change can be made until the Commission and the Supreme Court find that the rate is wrong. The fact is that no order can be suspended pending review, unless it plainly appear to the circuit court from an inspection of the record that the order is unreasonable and illegal, so that there is no chance of getting any suspension at all in any case unless on the face of the record the Commission's order is palpably wrong.

Great stress is laid by Mr. Prouty upon the fact that rates in certain sections are so adjusted as to favor the Standard Oil Company and other large enterprises. Every such rate adjustment as he describes is, if an improper adjustment, an undue preference of some locality or description of traffic, and directly in contravention of the present act, and susceptible of correction thereunder. Until the commission has at least made an intelligent and persistent effort in the exercise of the powers it already has to correct such evils, it certainly ought not to demand the unlimited powers which this bill confers.

In illustrating the meaning of the provision of this bill which authorizes the Commission to prescribe the regulations under which traffic shall move in order that the carriers shall conform to the law Mr. Prouty cited the case of storage facilities in transit being accorded at Buffalo to a miller at Minneapolis, and denied to another shipper by the same carrier. If such difference is unjustly made it is in violation of the present law, and the continuance of that violation can be prevented. The Commission contends, however, that it shall, in addition, have the power to prescribe the things which the carrier shall do for the future. Under this power the Commission could require storage facilities to be afforded to both of the shippers, and prescribe the extent and character of the storage facilities to be furnished to each. Nothing would be left to the discretion of the carrier; the Commission would relieve the carrier of all trouble in determining what it could afford to do for the shippers. This is a striking illustration of the way in which this bill will take the management of railroads out of the hands of the officers intrusted with their management by the owners of the property, and put that management into the hands of the Interstate Commerce Commission.

Mr. Prouty also refers to the Eau Claire case, and says that the Commission should have the power to prevent the difference in rates on lumber between Eau Claire and La Crosse. If the rates from Eau Claire and La Crosse to St. Louis were fixed and controlled by the same carrier, and if there was an unjust preference of one of those points over the other, the present law would afford ample opportunity to correct it; but if, as is the fact, the railroads which establish and control the rates from La Crosse do not reach Eau Claire at all, it is highly improper to give the Commission the power it wants. It is infinitely better for the welfare of this country to let different sections fight their own battles, aided as each will be by the railroads interested in it, than to turn over to the Commission absolutely (and in effect the

Commission's power would be absolute) the power to prescribe the comparative prosperity each section shall enjoy. The railroads controlling the rates from La Crosse to the west give La Crosse a substantially lower rate than Eau Claire, because in no other way could the lumber trade be encouraged at that point, since Eau Claire was nearer the forests and got its logs much cheaper, and if the same rates had been applied from Eau Claire and La Crosse the lumber business would have been centralized at Eau Claire. It seems eminently in the interest of the public that a railroad should in this way encourage the development of an industry on its own line, when otherwise such industries would be centralized at some point on another line possessing greater natural advantages. In this way the railroads of this country have done much for the wide dissemination of industry. Yet, in the Eau Claire case, the Commission pronounced this theory as "radically unsound," and implied that each place ought to be given the full measure of its natural advantages. Through the power to prescribe minimum rates the Commission would of course put entirely aside this "radically unsound" theory, and would proceed to weigh the natural advantages of various localities, and would enforce a rate adjustment as to give those localities such measure of prosperity as in the opinion of the Commission they should enjoy. In this way the Commission's power as arbiter over the commerce of the country would be supreme. Mr. Prouty intimates that the Commission had better be the arbiter than the carriers, but the point is that the carriers are not the arbiters. Each carrier is identified in interest with the section through which it runs. Its prosperity depends upon the prosperity of that section. It will not acquiesce in an unreasonable rate adjustment whereby some other section on some other railroad prospers at its expense. Each carrier will see to it that the places on its own line get a substantial share of the business, and will make rates accordingly. Of course this system is not perfect. No system is. But until a tribunal is to be appointed to settle every conflict of interest that arises in the agricultural, industrial, and commercial life of this country by self-executing decrees, there is no reason for giving to the Interstate Commerce Commission this power to settle absolutely the relative prosperity of various sections of the country. The country can not always hope to find a Commission composed of members of such superhuman integrity as to be beyond sectional influence, or so wise as to know precisely the amount of prosperity called for by the natural advantages of each locality in the country.

Mr. Prouty announces to the Commission that I am dealing with a subject about which I know nothing from a practical standpoint, and in the treatment of which theoretical knowledge is of no value. Of course, I do not hope that my arguments will be considered, except only so far as they are based on facts and appeal to the practical sense of the committee, but I prefer the committee rather than Mr. Prouty should decide whether my arguments are of value, as Mr. Prouty's employments as an Interstate Commerce Commissioner do not seem to be conducive to a judicial temperament. I must admit, however, that Mr. Prouty's statement that theoretical knowledge on this subject is of no value should command respect, for I am sure his own experience affords the amplest opportunity and occasion for such an appraisalment.

Respectfully,

WALKER D. HINES,
Assistant Chief Attorney.

THE PRESIDENT'S MESSAGE AND PROPOSED AMENDMENTS TO THE
INTERSTATE-COMMERCE ACT—ALSO SOME COMMENTS ON THE
"BACON" BILL.

The President's message and proposed amendments to the interstate-commerce act.

UNREASONABLE OR DISCRIMINATORY TARIFF RATES.

The President states in his message sent to Congress December 3, 1901, that the cardinal provisions of the act to regulate commerce were "that railway rates should be just and reasonable, and that all shippers, localities, and commodities should be accorded equal treatment."

Tariff rates are thus required to be reasonable and nondiscriminatory by that portion of section 1 of the act reading as follows:

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

And by that portion of section 3 reading as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The President indicates it is claimed that "while many rates are too low, many others are excessive, and that gross preferences are made affecting both localities and commodities." The President does not indorse this claim as true, and it is obvious that it is rarely, if ever, even partially true except in instances where rates are unjust or excessive as compared with secret cut rates accorded favored shippers.

The Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, in his statement before the Senate Committee on Interstate Commerce, March 18, 1898, said:

In the first place, as Senator Elkins says, the question of excessive rates—that is to say, railroad charges which in and of themselves are extortionate—is pretty nearly an obsolete question. I would not affirm there are not such rates; yet, broadly speaking, there are not many such. Those are not the rates of which the public complain. That is not the burden of the complaint. The discriminating practices which are accomplished either by compliance with the present law or in regard to it are things which really affect the public interest.

That rates are not excessive, per se, in this country may be regarded as generally conceded.

It is generally true also that tariff rates do not involve unjust discriminations either between different localities or different classes of traffic. The Interstate Commerce Commission has taken numerous cases involving supposed unjust discriminations of this character into the courts, and so far as the courts have gone into the merits of these cases they have almost without exception held that the adjustments in question were not improper and did not result in unjust discriminations. If this has been the view of the courts in cases which the Commission has picked out as involving such unjust discriminations, it can safely be assumed that the actual cases of such unjust discriminations

between tariff rates to or from different localities or on different kinds of traffic are very rare. Practically all the unjust discrimination of which complaint is made is due to secret concessions to particular shippers or at particular localities.

However, while this evil of tariff rates unreasonably high or unjustly discriminatory as compared with other tariff rates may be regarded as practically obsolete or merely theoretical, a substantial remedy exists under the present act to regulate commerce if any instances of such violation of the law actually arise. The courts will at the instance of the Commission compel the carriers to cease the continuance of any such excessive rate or unjust discrimination. It can be said with the greatest confidence and emphasis that this remedy for this evil has not only not been demonstrated to be insufficient, but that a fair examination of it will show that it is ample to correct substantially every violation of the law in the respect indicated.

As an illustration of the substantial power to correct adjustments of tariff rates which the Commission may believe to be improper may be cited the case of the complaint to the Commission that the rate on wheat was too low as compared with the rate on flour. The Commission, after investigation, expressed the opinion that the rate on flour should not exceed the rate on wheat by more than 2 cents per 100 pounds. The railroads, although not acquiescing in the propriety of that decision, realized the substantial power residing in the Commission, and have therefore uniformly complied with the Commission's decision, as has been stated by the chairman of the Commission in a recent communication. At the same time, complaint still continues to be made that the actual difference in the rates on wheat and flour in favor of wheat is very much more than 2 cents per 100 pounds and that this difference is brought about by secret rate cutting, thus illustrating anew that the real evil is the evil of secret rate cutting.

UNLAWFUL DEPARTURE FROM TARIFF RATES.

As indicated by the President's message, the carriers' tariff rates should be maintained and charged equally to all, without rebates or other forms of secret concessions to favored shippers or localities. All of this is required absolutely and unequivocally by the law as it now stands. Section 2 of the act to regulate commerce reads as follows:

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 6 of the act requires the carrier to publish its rates, file them with the Commission, post them at stations, and to give similar notice of all changes therein, and further provides:

And when any such common carrier shall have established and published its rates, fares, and charges, in compliance with the provisions of this section, in shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in such published schedule of rates, fares, and charges as may be from time to time in force.

Section 10 of the act to regulate commerce reads as follows:

That any common carrier subject to the provisions of this act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Any common carrier subject to the provisions of this act, or whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

A portion of section 12 of the act reads as follows:

That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is

conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the cost and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have the power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

It is difficult to conceive how provisions can be enacted which will make it more clearly illegal to depart from tariff rates or more clearly the duty of the Commission to investigate and prosecute for such departures when made or give the Commission more ample power to get all necessary information on the subject. If, however, any changes can be made in the law which will facilitate the discovery of such violations of the law or prosecutions therefor, there can certainly be no objection to their adoption.

It may be safely stated, however, that if the Commission had performed its manifest duty to enforce the act in this respect, and exercised the ample powers conferred upon it, the present notorious system of rate-cutting in some parts of the country would not exist. It may be properly stated that the defect is far more in the Commission than in the law.

This evil of secret rate-cutting is evidently the evil which the President seeks to correct. His statement of the situation is as follows:

Those who complain of the management of the railways allege that established rates are not maintained; that rebates and similar devices are habitually resorted to; that these preferences are usually in favor of the large shipper; that they drive out of business the smaller competitor; that while many rates are too low, many others are excessive; and that gross preferences are made affecting both localities and commodities. Upon the other hand the railways assert that the law by its very terms tends to produce many of these illegal practices by depriving the carriers of that act of concerted action which they claim is necessary to establish and maintain nondiscriminating rates.

Manifestly everything here said has relation to the evil of secret departures from tariff rates which is so notoriously prevalent in some sections of the country.

CONTRACTS TO POOL TRAFFIC OR MAINTAIN RATES.

The President states "the railroads claim that the law by its very terms tends to produce many of these illegal practices by depriving the carriers of the right of concerted action, which they claim is necessary to establish or maintain nondiscriminatory rates."

The provision evidently referred to is section 5 of the act, which reads as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate of the net proceeds of the earnings of such railroads or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense.

No doubt the President also had in mind the Sherman "antitrust law," as applied in the Trans-Missouri Freight Association and Joint

Traffic Association cases. So far as the maintenance of tariff rates may be aided by permitting carriers to divide traffic or earnings or make agreements to maintain rates, the statement is correct, but experience shows that it is not a matter of importance. It is well known that before the act to regulate commerce was passed the carriers could lawfully divide traffic, and did do so in some cases, but that rates were not maintained any better, if as well, as is now the case. Before the decision of the Trans-Missouri and Joint Traffic cases the railroads assumed that they had the power to make valid contracts to maintain rates, and yet such agreements did not seem to accomplish substantial results in actually maintaining rates.

HOW SHOULD THE ACT BE AMENDED?

The President further says:

The act should be amended. The railroad is a public servant. Its rates should be just to and open to all shippers alike. The Government should see to it that within its jurisdiction this is so, and should provide a speedy, inexpensive, and effective remedy to that end.

There can be no dissent from these propositions. But the question is how these results can be accomplished. There is already ample provision for substantial remedy against all cases of excessive rates or unjust discriminations in tariff rates that may exist. It is difficult to see how secret rate cutting can be made any more unlawful or any more easily discovered or prosecuted than at present, but if any amendments can be devised having such a tendency there certainly can be no objection to their adoption. The pretended correction of secret rate cutting should not be made a cloak for giving vast powers to the Commission having absolutely no relation to that end.

THE CULLOM BILL.

The bill heretofore prepared by the Commission, for the passage of which it seemed to conduct an active campaign in its official capacity, known as the Cullom bill, had no substantial tendency to prevent the rate-cutting evil. Nearly all of that bill was devoted to an elaborate scheme whereby the Commission should make the classifications and rates for all the interstate rail carriers in the country, to whatever extent the Commission should choose to exercise such a power, and put same into effect without resort to the courts, saying, however, to the carriers a right of appeal to the courts. While the Commission strove to create the impression that thus to make it the virtual traffic manager of all the interstate railroads in the country would prevent secret rate cutting, such a step would, in fact, have had not the slightest tendency in that direction.

There would have been just the same temptation and just the same facility for secret rate cutting when the rates were fixed by the Commission as when the rates were fixed by the railroads. Moreover, so far as the Cullom bill did affect the matter of secret rate cutting, it had a tendency to encourage rather than to discourage the practice. It proposed to repeal the provision of the present act that rates might be increased on ten days' notice and reduced on three days' notice and prohibit any change in rates except upon sixty days' notice, authorizing the Commission, however, to allow changes upon less

notice in particular instances or by general orders applicable to special conditions and species of traffic. Since reductions in rates are frequently imperatively demanded by commercial exigencies suddenly arising, it is absolutely certain that any such provision would have compelled the railroads either to reduce rates unlawfully or to give up much valuable traffic. The Cullom bill further proposed to repeal all provisions of the present act prohibiting shippers inducing or aiding or abetting carriers in giving them secret concessions and making shippers liable in damages severally or jointly with carriers to any party discriminated against, thus releasing the very parties really bringing about these unlawful practices from any fear of punishment and thereby encouraging them to be more active in their efforts to secure such unlawful advantages.

The Cullom bill did propose some simplification of procedure so as to facilitate prosecutions under section 2 of the act, and that the Commission should be given access to the accounts of the carriers and authorized to employ special examiners to inspect them. Only in these two minor respects, which probably did not change the authority of the Commission in any respect, did the Cullom bill hold out any promise of even tending to ameliorate the present rate-cutting situation or to facilitate the discovery or prosecution of such offense.

LEGISLATION WHICH THE COMMISSION MAY NOW ADVOCATE.

The exact terms are not yet known of the bill which will be pushed by the Commission in the present Congress. It may be safely assumed, however, that upon examination it will be found to give the Commission the full power to make rates whenever the Commission thinks proper to do so, and at the same time will offer no amendment of practical value so far as the prevention of secret rate cutting is concerned. It may be further safely assumed that the Commission will continue to insist, contrary to the facts, as it has always done in the past, that its bill does not give it any rate-making power of substantial importance, and will continue to imply, contrary to the facts, as it has done in the past, that such rate-making power as is proposed will stop secret rate cutting.

Copy of a bill is hereto attached which it is understood has the approval of the Commission, or some of its members, although it is not yet known whether it is the precise bill which the Commission will advocate. It will be observed that this bill authorizes the Commission, after hearing pursuant to section 13 of the act, to prescribe any rate or rates, or any regulation or practice affecting same, whenever the Commission believes that existing rates, regulations, or practices are unreasonable or unjustly discriminatory, and declares that any such order of the Commission "shall be lawful and become operative and be observed by the party or parties against whom same shall be made, within fifteen days after notice, or in case of proceeding for review, then within thirty days after notice." Provision is made that such an order of the Commission shall be reviewable by any circuit court of the United States to which petition filed on its equity side shall be first presented by any party interested, and that the order may be modified, suspended, or revoked by the court.

It is generally conceded that the power to fix specific rates which shall be charged for the future is a legislative power which can not be

exercised by the courts except only to the extent that rates which may be found by the courts to be confiscatory in character may be set aside. Undoubtedly this would be the full limit of the power of the courts in reviewing rates fixed by the Commission under this bill if enacted. In other words, the courts would have no more power to review the rates fixed by the Interstate Commerce Commission than all courts inherently have to review rates fixed by legislative authority, and consequently the provision in this bill for judicial review is without significance.

This fact is fully recognized by the Interstate Commerce Commission, as evidenced by the following statements of its members:

Chairman Knapp before the Senate Committee on Interstate Commerce, March 10, 1898:

One doctrine is now settled—that whereas the investigation of the question of whether an existing rate is a reasonable and lawful one or not, is a judicial question, the determination of what that rate shall be in the future is a legislative or administrative question, with which the courts can have nothing to do.

Again, on page 26 of same hearing, he said:

This is the theory of it. This Commission, for the purpose we are now discussing, represents the Congress of the United States, and when it has made an order, in a certain sense it is like an act of Congress.

On page 118 of hearing before the Committee on Interstate Commerce of the United States Senate February 20, 1900, Commissioner Prouty said:

The prescribing of a rate is, under the decisions of the Supreme Court, a legislative not a judicial function, and for that reason the court could not, even if Congress so elected, be invested with that authority.

Therefore the point much urged by the Commission, that under the rate-making power it seeks it can do nothing which will not be fully subject to review and correction by the courts, is wholly disingenuous and misleading.

The point has also been much urged that the Commission can not make rates generally, but only upon complaint and after investigation. Under section 13 of the present act the Commission may institute any inquiry of its own motion in the same manner and to the same effect as if complaint had been made; but even if this were not true, the Commission would of course have no difficulty in procuring from individual shippers any sort of complaint it wished to take up. The Commission may bring before it as many carriers in one proceeding as it sees proper, and investigate as many rates, regulations, and practices as it sees proper. The scope, therefore, of the Commission's rate-making activity will be limited only by its own wishes and discretion. The strongest State commission does not vary its rate from those theretofore fixed by the railroads except when it conceives that the rates of the latter are unreasonable or unjustly discriminatory, and the Interstate Commerce Commission under the proposed bill would have precisely the same measure of authority.

It will be observed that the Commission is not only to make any rate or rates, but to prescribe any regulations and practices in its discretion. Consequently, if the Commission believes that the practice of two connecting lines not to make a through route and a through rate from a point on one line to a point on the other is unreasonable, it can prescribe that for the future these carriers shall observe the practice of establishing such through route and through rate, and can prescribe

the through rate that shall be observed and the divisions of same. Sections 1 and 5 of the proposed bill undoubtedly give the Commission this power, and therefore give the Commission practically unlimited power to divert from one company's line the traffic developed by it, and convert such line into a mere feeder for its competitors.

The provision in the attached bill that these orders of the Commission shall be in effect only for twelve months, constitutes no practical limitations upon the Commission's power. If a carrier is once forced to observe the Commission's rate or regulation for twelve months, it will not likely then be able to restore its own rate or regulation, even in the absence of further action by the Commission. If the carrier shows any disposition to restore its former rate or regulation, the Commission will no doubt very promptly make another order for the next twelve months, and will thus have complete control of the subject.

As pointed out above, the provision authorizing contracts to pool traffic or maintain rates would not likely be of practical permanent value if secured. It certainly will not be incorporated in any act that Congress may pass unless it is believed to be to the public interest. If it is to the public interest it should stand on its own merits, and not be coupled with dangerous and wholly unnecessary provisions having absolutely no relation to it, and which will constitute a serious menace to the railroads.

Section 6, providing that the courts may enforce observance of the published tariff rates by proper orders and processes, adds nothing to the present law. Provision is now made for enforcing the observance of published tariff rates when it can be established that they are disregarded. If this provision, however, has any possible tendency to promote the maintenance of tariff rates, there can be no possible objection to its adoption. It is, however, the sole provision of this bill which even tends to meet the recommendations of the President on this subject, which are evidently designed to prevent the present practice of secret rate-cutting.

THE ENGLISH SYSTEM. •

The Commission has occasionally resorted in the past, and may do so in the future, to the English system as an argument in favor of its scheme for obtaining rate-making power. The English system, however, is a direct argument against the Commission's scheme, rather than in favor of it. The English railroad commission has no power whatever to make any rates except that it may prescribe through rates under very careful restrictions. Under the English system the board of trade, which is practically a department of the Government, endeavors to agree with the railroad companies upon their rates, and in the event of disagreement the matter is submitted to Parliament for action.

The English commission is frequently cited as a commission which enforces its own orders without resort to the courts. The argument is made that the Interstate Commerce Commission should have the same powers. The English railroad commission, however, is so constituted as to insure a fair tribunal for the consideration of the questions brought before it. It is a court, its members are appointed for life, and it has no duties to perform except such as are strictly compatible with the judicial office. It can not inaugurate complaints on

its own motion. It has not the functions of detective and prosecutor, which are important functions of the Interstate Commerce Commission, and it is conceived that it does not occupy the attitude of a promoter of legislation inimical to railroad interests. With such limitations and safeguards the English commission may properly enforce its own orders without resort to other courts for their enforcement. The Interstate Commerce Commission is wholly without such safeguards and therefore should not, as at present constituted, be granted the power it seeks of making any orders which may become effective without resort to the courts.

In considering the English system in any aspect it is essential to bear in mind that that system prevails over an area not more than one-thirtieth that of the United States, and that the desire of the Interstate Commerce Commission is to obtain the rate making power with respect to a railway mileage greater than that of all Europe, including England, Scotland, and Ireland, and with respect to traffic almost infinitely more diversified than that which is subject to the carefully guarded English method of regulation.

CONCLUSION.

The ultimate fact, which the Interstate Commerce Commission has always tried to conceal and which it will continue to try to conceal, is that according to its demands, however framed, it is to have the legislative power to make rates, regulations, and practices to whatever extent it chooses to exercise that power. In other words, it is to be the traffic manager of all the interstate carriers of this country, and the virtual arbiter of the diverse commercial interests of all the localities of the United States. It seeks this power wholly without any showing that there is any serious traffic evil which needs for its correction such a radical and far-reaching innovation; entirely without any demonstration that the existing law is not fully adequate to correct every unreasonable or unjust tariff rate, and when in fact it is entirely adequate; and without any respectable pretense that this power will in the slightest degree tend to correct the only really serious traffic evil now existing, i. e., that of secret rate cutting.

Extremely pertinent to this situation is the concluding sentence of the President's comments upon this subject in his message to Congress:

"Nothing could be more foolish than the enactment of legislation which would necessarily interfere with the development and operation of these commercial agencies" (the railways).

WALKER D. HINES,
First Vice-President,

Louisville and Nashville Railroad Company.

LOUISVILLE, KY., December 6, 1901.

A BILL To enlarge the jurisdiction and powers of the Interstate Commerce Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, as follows:

SECTION 1. That any definite order made by the Interstate Commerce Commission after hearing and determination had on any petition

hereafter presented pursuant to section thirteen of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, declaring any existing rate or rates for the carriage of any given article or articles, person or persons, or any regulation or practice affecting such rates, to be unjustly discriminative or unreasonable, and prescribing a rate or a regulation or a practice for the future in substitution, shall be lawful and become operative and be observed by the party or parties against whom the same shall be made, within fifteen days after notice; or in case of proceeding for review as hereinafter provided, then within thirty days after notice; but the same may be at any time modified, suspended, or revoked either by the courts in case of review, or by the Commission at any time, but shall in no case continue in force and be obeyed beyond the period of one year from the date the same becomes originally operative and is observed. Such order shall be reviewable by any circuit court of the United States to which a petition filed on its equity side shall be first presented by any party interested; and the several circuit courts of the United States are hereby invested with full jurisdiction and powers in the premises, including the issuance and pursuit of the necessary process to secure appearance of the parties. The court shall also direct notice to the Commission of the filing of said petition; whereupon it shall be the duty of the Commission, within ten days after the receipt thereof, to cause to be filed in said court, duly certified, a complete copy of the entire record, including petitions, answers, testimony, report, and opinion of the Commission, order, and all other papers whatsoever in connection therewith. The court shall thereupon proceed to hear the same either upon the petition, record, and testimony returned by the Commission, or in its discretion may, upon the application of either party, and in such manner as it shall direct, cause additional testimony to be taken, and thereupon determine the same by appropriate decree. Any party to the cause may appeal to the Supreme Court of the United States within thirty days of the rendition of any final decree of said court; which court shall proceed to hear and determine the same in due course without regard to whether the one year hereinbefore limited for the continuance of said order shall have expired or not.

SEC. 2. If any party bound thereby shall refuse or neglect to obey or perform any order of the Commission mentioned in section one of this act at any time while same is in force as provided by said section, obedience and performance thereof shall be summarily enforced by writ of injunction or other proper process, mandatory or otherwise, which shall be issued by any circuit court of the United States upon petition of said Commission, accompanied by a certified copy of the order alleged to be violated, and evidence of the violation alleged; and in addition thereto the offending party shall be subject to the penalty of ten thousand dollars, which, together with costs of suit, shall be recoverable by said Commission by action of debt in any circuit court of the United States. Where, however, any order made by the Commission shall involve the rate on traffic passing in part over the line or lines of any railroad company operating in any foreign, and passing in part over lines of railroad companies operating within the United States, or shall involve the usage of such foreign road with respect to such traffic, then in case such order shall not be observed it shall be lawful for the Commission, or the court having jurisdiction,

in addition to the other remedies herein provided, to enforce the order against the traffic so passing in part through a foreign country and in part through the United States, by suspension of the movement thereof through the United States, save upon the condition that the terms of the order shall be complied with.

SEC. 3. That any officer or agent of any common carrier who may be convicted, after passage of this act, of any offense against the provisions of the act to regulate commerce (whether committed before or after the passage of this act) to which the penalty of fine or imprisonment, or both, now attaches, shall be subject only to the penalty of the fine prescribed by law.

SEC. 4. It shall be lawful for any two or more common carriers to arrange between and among themselves, by contract or otherwise, for the establishment or maintenance of rates or division of traffic or earnings.

SEC. 5. In any proceeding before the Interstate Commerce Commission in which it shall be sought to procure any order, whether the order is such as is authorized in the first section of this act or otherwise, it shall be lawful to include as parties all persons, in addition to the carrier, interested or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, and orders may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as is or shall be authorized by law with respect to carriers.

SEC. 6. Whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passenger or freight traffic between given points at less than the published rates on file, it shall be authorized to present a petition to the circuit court of the United States having jurisdiction of the parties, alleging such practice; whereupon it shall be the duty of the court to summarily inquire into the circumstances, and upon being satisfied of the truth of the allegation, to enforce an observance of the published tariffs by proper orders and process, which said orders and process may be enforceable as well against the parties interested in the traffic as against the carrier.

SEC. 7. That all provisions of any existing act or acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

Some comments on the "Bacon" bill.

[Minneapolis Northwestern Miller, December 26, 1901.]

LOUISVILLE, KY., *December 13, 1901.*

EDITOR NORTHWESTERN MILLER,
Minneapolis, Minn.

DEAR SIR: I have read the "Bacon" bill published in full in your issue of December 11, and beg permission to submit some comments upon it.

It is important to know first what the trouble is which it is sought to remedy. I understand the millers are interested in this subject because they contend there is now unlawful discrimination against flour in favor of wheat which has so far not been prevented under the

present interstate-commerce act. The facts seem to be that upon complaint to the Interstate Commission elaborate hearing was had, and the Commission ruled that the rate on wheat might properly be 2 cents per hundred pounds less than the rate on flour; that all the railroads have complied with this ruling to the extent of establishing this differential in their published tariffs, but that by means of secret rebates on movements of grain the railroads have in effect not observed this differential, but have established a secret and fluctuating differential in favor of grain, which is very much greater, and is injurious to the milling trade. This being the evil, the question is, Are the amendments in the bill submitted by Mr. Bacon going to remedy it?

The Bacon bill consists of four sections, the first amending and reenacting section 10 of the present act, the second making an addition to section 15 of the present act, the third amending section 16 of the present act, the fourth preserving the present law with respect to offenses already committed.

The only portions of the Bacon bill which have any relation to the evil above referred to are section 1, amending section 10 of the present act, and a part of section 3, amending section 16 of the present act. No other part of the bill has any relation whatever to the prevention of the evil in question.

Section 10 of the present act is the one prescribing penalties. Mr. Bacon's amendment to this section abolishes the penalty of imprisonment, and imposes the fines upon the corporation as well as upon its agents. Beyond this he effects no change in the present law except, possibly, changing the amount of some of the penalties. Sections 6 and 10 of the present law, taken together, require everything that is required by Mr. Bacon's section 10, and prohibit everything that is prohibited by Mr. Bacon's section 10. If removing the penalty of imprisonment and making the corporation subject to the fines will facilitate prosecutions for secret rate-cutting, then to that extent Mr. Bacon's bill may tend to accomplish the object had in view.

The portion of section 3 amending section 16 which may be said to have some relation to the prevention of discriminations growing out of secret rate cutting reads as follows:

Any circuit court of the United States for a district through which any portion of the road of a carrier runs shall upon petition of the Commission or of any party interested enjoin such carrier or its receivers, lessees, trustees, officers, or agents from giving, and a shipper from receiving, with respect to interstate transportation of persons or property subject to the provisions of this act any concession from the lawfully published rate, or from accepting persons or property for such transportation if a rate has not been lawfully published; and by "concession" is meant the giving of any rebate or drawback, the rendering of any additional service, or the practicing of any device or contrivance by which a less compensation than that prescribed by the published tariffs is ultimately received, or by which a greater service, in any respect, than that stated in such tariffs is rendered. And in proceedings of this nature said court shall have power to compel the attendance of witnesses, both upon the part of the carrier and of the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and of the shipper, which relate directly or indirectly to such transaction; but all persons so required to testify shall have the same immunity from prosecution and punishment as is provided in an act as approved February eleventh, eighteen hundred and ninety-three, entitled "An act in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and amendments thereto."

There is a provision of the present act, adopted March 2, 1889, reading as follows:

That the circuit and district courts of the United States shall have jurisdiction, upon the relation of any person or persons, firm or corporation, alleging such violation by a common carrier of any of the provisions of the act to which this is a supplement and all acts amendatory thereof as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier commanding such common carrier to move and transport the traffic or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

It may well be doubted whether the new provision quoted or the one already in the act adds any substantial remedy to the act. If a mandamus should be obtained under the present act or an injunction issued under the proposed amendment, the carrier would merely be required to do that which the law expressly requires him to do anyhow under heavy penalties. It would seem, therefore, to be about as easy to make legal proof of and punish the violation of the act itself as to make such proof of and punish the violation of the mandamus or injunction. If, however, it is believed that the adoption of this provision will increase the remedy now existing and facilitate the prevention of secret rate cutting, there could be no objection to making the experiment.

The foregoing provisions, which make such slight changes in the present act, and evidently have such slight value in increasing the efficacy of the law, are absolutely the only ones that relate to the matter sought to be remedied.

The rest of this bill, however, while having no possible connection with the evil complained of, is of the most radical character. In a different form it embraces all the important parts of the Cullom bill. It confers upon the Commission the legislative power of making rates, classifications, and regulations for interstate carriers. It gives the courts nominal power of review, but it is a power which the courts would be unwilling to exercise, and which, moreover, as the Interstate Commerce Commission well knows, the courts could not exercise under the Constitution, since the power in question is legislative and not judicial. The power of the courts over the rates fixed by the Commission under this bill would be just the same as the courts would have if no judicial review were provided for at all; that is, it would be the power to set the rates aside if they were found to be confiscatory in character. In other words, under this bill the Commission may take away just as much of the profits of the railroad companies as it chooses without any fear of interference by the courts so long as the railroads can not demonstrate that practically all of their profits have been destroyed. Thus under this bill the power of the Commission over the railroads is almost absolute, and they have perhaps an even greater power over the relative prosperity of all the cities and towns in the United States. There is not one of the forcible and unanswerable arguments with which you have so vigorously assailed the Cullom bill that is not equally applicable to this measure.

There is absolutely no excuse for the passage of the parts of this bill conferring upon the Commission the rate-making power. It will not in any way tend to prevent the discriminations so generally complained of which result from secret rate cutting. It is not needed to remedy any unjust discriminations which may exist in tariff rates, the present act, when properly enforced, affording ample protection in that regard.

It does seem that these two entirely distinct branches of this subject should be kept separate. There is no reason why amendments designed to assist in enforcing the law relative to the publication of rates and charging of rates as published should be coupled with the entirely distinct proposition that the Commission should have the legislative power of making tariff rates. It would seem wise for those who in good faith desire to prevent secret rate cutting and believe that amendments to the act will promote that object to push the amendments related to that object instead of promoting the plan of putting the general rate-making power in the hands of the Interstate Commerce Commission. The latter scheme will not remedy any substantial evil, and as it is so needless and dangerous it will undoubtedly develop serious opposition which would not be raised at all with respect to any amendments designed in good faith to enforce the maintenance of published tariffs.

Yours, truly,

WALKER D. HINES,
First Vice-President
Louisville and Nashville Railroad Company.

SOME COMMENTS UPON MR. E. P. BACON'S ARGUMENTS IN BEHALF OF
THE RATE-MAKING POWER FOR THE INTERSTATE COMMERCE COM-
MISSION.

In the North American Review for January, 1902, Mr. E. P. Bacon discusses under the title of "Inadequate powers of the Interstate Commerce Commission" what he conceives to be the remedies for the evils which he depicts. He dwells upon the "power for extorting money from the public" which, he says, is possessed by the railroads. He declares that the consumers and producers must "be protected from the rapacity of the common carriers of the country," and demonstrates, at least to his own satisfaction, that during the year ended June 30, 1900, over \$142,000,000 was "wrongfully wrung from the pockets of the people" by the railroads.

The fundamental principle of Mr. Bacon's treatment of this subject is not stated so clearly in this article as it was stated by him in a recent communication to the New York Times, wherein he indicated that the demand of himself and his associates for the desired amendments to the act to regulate commerce was based upon the doctrine that the railroads performed a governmental function, and therefore should perform it in the same manner as if done by the Government itself, and consequently should be allowed only a fair return upon their investment. It has been frequently asserted that the railroads are performing a governmental function, and but few seem to have stopped to inquire into the correctness of the assertion. Our theories of government have been derived from England. When did it become a

governmental function either in England or America to transport freight or passengers by rail, water, or ordinary highways? The fact is, that while it has been conceived to be a governmental function, both in England and America, to provide public highways for ordinary travel, it has never been the policy of the Government to perform the transportation service. It would, no doubt, require an amendment to the Constitution of the United States before the United States Government could acquire and operate the railroads of the country. Clearly the stage driver or the drayman does not perform a function of the Government, although he uses the public highway, any more than does the butcher or the baker, for whose equal use that public highway is made.

If we grant, for the sake of argument, that Mr. Bacon is correct in his position that the carrying of freight and passengers is governmental work, and that therefore the Government must see that the carriers do that work just as the Government itself would do it, it would necessarily follow that the regulation must not stop with the matter of rates, but must extend to the character of the service, and the Interstate Commerce Commission must be endowed with the power of correcting time tables as well as tariffs, thus regulating the number, speed, and time of trains. Moreover, if the carrying of freight and passengers is governmental work, and the Government must see to it that not more than a "fair return" is enjoyed by the corporations which perform this governmental service, is it not equally incumbent upon the Government to see that these same corporations enjoy not less than a "fair return?" Mr. Bacon complains bitterly that during the most prosperous year our country had known, and when other capital had enjoyed very large returns, the railroads realized a surplus of \$142,754,358, amounting practically to 1½ per cent of the amount invested in railroads. He denounces this sum as "wrongfully wrung from the pockets of the people." He seems to think that the \$118,624,409 paid in dividends, representing approximately 2.1 per cent on the capital stock, is the full measure of the "fair return" to which the railroads are entitled. He seems to think that it was particularly indefensible in the railroads, in addition to paying dividends averaging 2.1 per cent on the capital stock, to devote about \$25,000,000 to permanent improvements, although such permanent improvements are generally regarded as directly in the public interest. Mr. Bacon does not indicate, however, that if his theories are carried out it will be proper for the Government to make up the deficit in years of depression, or to insure the "fair return" of 2.1 per cent on the capital stock.

If transportation is a function of the Government, why not regulate carriers by water, which, in fact, do use a free highway, improved by the Government for their benefit? If the transportation service is governmental, is it not the duty of the Government to perform this work itself instead of leaving it to others, who, according to Mr. Bacon, perform it so badly? But while Mr. Bacon may be unwilling for the Government to perform what he says is its own work, and does not propose even regulation except for the railroads, and desires regulation only for the revenue of the railroads, he certainly should, in order to be consistent, make adequate provision for guaranteeing the "fair return." Many railroads are operated without any profit whatever except in unusually prosperous years. The average returns for the past ten years would show an almost inappreciable profit on a vast number

of railroads. They would welcome with delight an undertaking by the Federal Government to insure them enjoyment of an adequate profit in the future.

The truth is, that the basis of governmental regulation is the fact that the business regulated is "affected with a public use." Warehouses and grain elevators are subject to the same regulation, and at common law millers and bakers were subject to the same regulation as common carriers. The extent of the regulation is simply to protect the public against unreasonable exactions or unjust discriminations. It is neither the duty nor the moral right of the Government to restrict the returns of a business affected with a public use so as to afford only a low rate of interest in good years and leave it to face deficits in bad years. Such action is especially unjust with respect to a business so hazardous in its results as the railroad business. It is not the duty or moral right of the Government to prohibit the investor in a business affected with a public use from sharing along with other investors in liberal returns on invested capital in prosperous years. It may be that the carrier is without constitutional protection if the Government so reduces its revenues as to leave but a small return, provided that return is not so small as to prove confiscatory. Because the Government is powerful enough to cut down revenues to a very low basis is no reason why it should do so, or why it should confer on the Interstate Commerce Commission the power of determining, almost conclusively for practical purposes, how small a return shall be permitted on capital invested in railroads.

Mr. Bacon discusses the "pervasiveness" of the cost of transportation; points out that it constitutes part of the cost of everything, and is collected as silently and unconsciously to the actual payer as the customs duties of the Government. He shows that the freight revenues of the country are several times as much as the import duties collected by the Government. In the advanced state of civilization of the present day every economic element is pervasive. The "actual payer" contributes to the cost of raw materials or the cost of labor just as "silently and unconsciously" as he does to the cost of transportation. The annual cost of raw materials or the annual cost of labor is, no doubt, many times the annual import duties. It is not perceived that these conditions would justify vesting the Interstate Commerce Commission with the power to fix the cost either of raw material or labor.

Mr. Bacon is evidently of the opinion that rates of freight generally in this country are decidedly too high. He does not content himself with the general figures above referred to, but goes on to point out increases made by changes in classification during the year 1900, and proceeds to combat the generally accepted theory that rates have steadily declined in this country. He also insists that less than carload rates should not, at the most, exceed carload rates by more than 5 per cent. It is evidently this general condition of "extortionate" rates which Mr. Bacon proposes to correct by giving the Commission the power to make rates, and yet Mr. Bacon takes great pains to make the impression that the rate-making power desired is not a general rate-making power at all. Obviously, if it is not a general rate-making power, it can not correct the generally extortionate rates which Mr. Bacon claims now prevail in this country.

In point of fact, however, the rate-making power advocated by Mr.

Bacon and his associates is as general as it is possible to make it. It is proposed to give the Commission the power to make rates upon complaint. There is no limit to the number of rates that may be complained of in a single petition. The Commission itself can, under the law, inaugurate complaints whenever it pleases. The Supreme Court of the United States has pointed out that under the proposed power the Commission could inaugurate a single complaint, and as a result of it reduce every interstate rate in the United States. In one case in which the Commission assumed to exercise the power which Mr. Bacon proposes to give it, it materially reduced the rates upon two thousand or more articles from Chicago and Cincinnati to eight of the principal Southern cities. If its order had been effective, it would have radically changed the rates on a very large percentage of all the interstate traffic of the United States. Indeed, the change of a single important rate upon one class of freight, or even upon a very few articles, will necessarily bring about other changes of the most widespread character.

While, therefore, Mr. Bacon argues to the contrary, there is no doubt of the fact that the Commission would have ample power to make the general rate reductions which Mr. Bacon attempts to show are necessary. Mr. Bacon's article clearly shows that the Commission will be called on to make these general reductions to meet the views of Mr. Bacon and his friends. The extensive and sweeping activity of the Commission in the past in making rates when it had no power to do so is the surest possible indication that the Commission will undauntedly go about the general rate reductions which will in this way be called for. Nothing can be more pertinent in this connection than the following vigorous words of Judge Cooley:

The Commission would in effect be required to act as rate makers for all the roads, and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This in any considerable state would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman. A construction of the statute which would require its performance would render the due administration of the law altogether impracticable; and that fact tends strongly to show that such a construction could not have been intended. (In re L. and N. Co., 1 Int. Com. Com. Rep., 56.)

Mr. Bacon starts out with the incorrect statement that the interstate-commerce act has proved futile in remedying the abuses in the transportation service which it was designed to correct, because the Commission has been rendered impotent by decisions of the Federal courts.

The principal evil which the act to regulate commerce was designed to correct was the evil of secret rate cutting. There has been no decision of the Federal courts which has impaired the ability of the Commission to enforce the law in this respect. In this regard Mr. Bacon's statement is absolutely without foundation.

The other evils, or possible evils, which the act was designed to correct were rates excessive or unjust in themselves, and unjust discriminations between different localities or different classes of traffic, such unjust discriminations being confined, of course, to those apparent from the tariffs, since those resulting from secret rate cutting fall under the other branch already referred to. It seems to have been generally conceded until Mr. Bacon's article appeared that rates generally were not of themselves excessive in this country. And unjust

discriminations between different localities or different classes of traffic are surely not very numerous, taking into consideration the enormous volume of our interstate traffic. Only twenty formal complaints of all kinds were filed before the Commission during the year 1900, which is the last year for which the figures are now before me. But whether such complaints be few or many, the present act provides a substantial remedy for all instances where any railroad company attempts to charge tariff rates which are in themselves excessive, or which work an unjust discrimination between different localities on its line or between different descriptions of traffic passing over its line. Mr. Bacon claims that the power to order the carrier to cease and desist from charging an excessive or unjustly discriminatory rate is worthless because the carrier may comply with the order by making some inappreciable change, yet Mr. Bacon fails to instance a single case in which the Commission has made an order of that sort and sought to enforce it through the courts where the result has not been either compliance by the carrier or decision by the courts that on the merits of the case the order was improper. In numerous cases the Commission has gone beyond its powers and attempted to prescribe rates for the future, or has refused to give consideration to competent evidence submitted to it, and on one or the other of these accounts the courts have frequently set aside the Commission's orders. These are the cases to which Mr. Bacon refers when he speaks of the delays in the courts varying from five to seven years. These cases, however, fail utterly to show any lack of efficacy in the law when the Commission keeps within its powers, or to show any undue delay in enforcing the Commission's lawful orders.

Mr. Bacon states that the Wisconsin Cheese Makers' Association complained of the rates on cheese to Chicago. He says that the association was advised to make complaint to the Interstate Commerce Commission, but in view of the limitations set upon the authority of the Commission by the decisions of the Supreme Court "the association was discouraged from undertaking any further proceedings." He also refers to numerous increases in rates by changes in classification, and shows that the Interstate Commerce Commission made a general investigation of complaints arising out of these changes in classification and in effect announced that the changes were unjustifiable. He shows that the Commission indicated by its report that there was no public tribunal before which inquiry could be had into these changes and redress could be administered. Mr. Bacon deduces from this the conclusion that the present act is futile and that the Commission can not afford any redress unless it is given the power to make rates generally. The real conclusion established by Mr. Bacon's statements is either that the Interstate Commerce Commission believed that the rates in question were not unreasonable, or, if it believed them unreasonable it preferred to avoid attempting to correct them. The fact that the commission did not have all the power it desired was no reason for its not exercising all the power it did have, if it believed the increased rates were unlawful. The present act gives the Commission the power to order carriers to discontinue any unjust discrimination between different classes of traffic, and also gives the Commission the power to order the discontinuance of any unreasonable rates. Hence if changes in classification work such discriminations or bring about unreasonable rates,

the Commission has the power to order their discontinuance. The Commission has recently held that it had this power, and has exercised it in the case of Meyer *v.* various railroads, decided by the Commission on November 27, 1901. Yet, while the Commission sought in various ways to make the impression that the increased rates brought about by the changes in classification referred to by Mr. Bacon were unjust and indefensible, it refrained from exercising the power which it admittedly had, and sought to create the impression that it had no power in the premises. The result was that only three formal complaints seem to have been filed involving the question of classification, two relating to alleged wrongful classification of marble and granite blocks, and one to alleged wrongful classification of common soap. The complainants in the first two cases succeeded in making a satisfactory compromise, resulting in 20 per cent reduction in the rates involved, and the last-named complaint seems never yet to have been determined. The history of this matter wholly fails to show lack of efficacy in the present law; it simply shows that the Commission has managed to avoid taking the steps which it undoubtedly has the right to take to enforce the law in cases where it believes that the law has not been complied with. The grant to the Commission of the practically unlimited power and discretion to make all the interstate rates in this country should rest upon a more substantial basis than the mere fact that the Commission, displeased with the limits of its present powers, has been unwilling to exercise those powers.

There has so far been an utter failure to demonstrate that the Commission's power to order the discontinuance of unlawful practices is not adequate to afford substantial protection. Mr. Bacon comments upon the fact that the representative of one railroad admitted that that company had never complied with an order of the Commission without testing its validity in the courts. I am the representative to whom he refers, and I take this occasion to state that in every such contest, with one exception, the courts have set aside the Commission's orders on the grounds that the Commission had exceeded the powers given it by the act, or had ignored competent evidence which was offered by the railroad company. These decisions, however, fail utterly to show that unlawful practices are not susceptible of adequate correction if the Commission proceeds according to the law. When it so proceeds its orders of discontinuance directed against any existing unlawful practices will, of course, be upheld by the courts, and the long delays which were incident to the cases wherein the Commission had exceeded its powers will not exist. The circuit court to which the Commission applies for the enforcement of its orders is required to give a speedy hearing, and if it decrees the enforcement of the Commission's orders an appeal by the carrier can not suspend or postpone the orders going into effect. Certainly a fair trial should be given to the present act instead of condemning that act because the Commission has, in numerous instances, invalidated its orders by exceeding its authority, and in numerous other instances has avoided exercising the authority which the act confers upon it.

Not only will the rate-making power which Mr. Bacon advocates be as general and sweeping as could possibly be imagined, both in theory and in practice, but, both in theory and in practice, it will be virtually *free from any substantial review* by the courts. It is settled that the

rate making is not a judicial but a legislative function, and, as the members of the Interstate Commerce Commission declare, is a function with which the courts can have nothing to do. The only power the courts would have under the review provided in the bill advocated by Mr. Bacon, or under any review that could be provided, will be the power to set aside rates fixed by the Commission if those rates are so very low as to amount to confiscation. Moreover, it is clear that the courts would not be willing to exercise the power, even if they had it, of setting aside rates whenever they might disagree with the Commission as to the reasonableness of those rates. The courts would undoubtedly hold that the questions involved were questions of fact peculiarly within the province of the Commission, and would not disturb the Commission's findings upon those questions of fact unless the findings were palpably wrong. Therefore a very wide absolute discretion would be vested in the Commission. Undoubtedly, therefore, Mr. Bacon's proposition is to give the Commission unlimited and practically absolute power to make rates just as generally as the Commission may choose to make them.

While it is plain that the transportation of freight and passengers is not and never has been a governmental function either in England or the United States, it is not denied that the Government has the right to adopt reasonable regulations for the purpose of securing just and reasonable rates. I earnestly insist that the present law affords ample protection in these respects so far as tariff rates are concerned; that the general power in the Commission to make in its discretion rates for all interstate carriers of the United States is a power of the most stupendous and dangerous character imaginable, involving an infinity of complications utterly beyond the ability of any single tribunal, and absolutely unnecessary and indefensible.

Respectfully,

WALKER D. HINES,
First Vice-President

Louisville and Nashville Railroad Company.

LOUISVILLE, KY., *January 25, 1902.*

SOME COMMENTS UPON THE FIFTEENTH ANNUAL REPORT OF THE
INTERSTATE COMMERCE COMMISSION.

In its fifteenth annual report, made public a few days ago, the Interstate Commerce Commission endeavors, as it has done for years, to excite support for its demand for more power by describing the prevalence of secret rate cutting. It recently held new investigations at Chicago and Kansas City to go through the form of finding out what it has known for years as to cut rates on packing-house products and grain in that territory. These hearings seem to have been held not for the purpose of taking steps to enforce the law, but simply to advertise in a striking way the Commission's contention that the law can not be enforced; and its annual report seems to have been unusually delayed so as to give great prominence to the subject by telling of these "startling" disclosures, which the Commission has known about for years.

The Commission utilizes this showing as to secret rates in certain

territory upon these two classes of traffic as its principal argument in favor of the legislation which it has been trying so long to get. As the only radical change which the Commission desires in the law is the power to make rates, and as that power can have no possible tendency to aid in the maintenance of tariff rates, this report has, like former reports, served to confuse the situation by creating the utterly false impression that the power it is striving for will prevent secret rate cutting. It is unnecessary in this connection to devote space to exposing this unworthy scheme of advertising an evil for the purpose of securing a remedy having no relation to it. Another aspect of the matter seems to demand more immediate attention.

The Commission condemns in unmeasured terms the shippers and railroads involved in these rate-cutting transactions, and moralizes at length upon the unfortunate effects of such violations of the law. It becomes important, in view of the Commission's attitude, to keep before the public the indisputable fact that the general prevalence of secret rate cutting upon any form of traffic in any section of the country must be due principally to the Commission's utter failure to perform its manifest duty. This statement is not made for the purpose of excusing or palliating the illegal acts of either the railroads or the shippers involved, but because it serves as an additional and striking illustration of the fact that such complaints as exist against the present act to regulate commerce are due to the Commission's failure to perform its duty under that act rather than to any defects in the act itself, and it therefore constitutes an unanswerable argument against giving the Commission more power.

The paramount purpose of the act to regulate commerce was to secure publicity and the maintenance of tariff rates. The report of the Senate Select Committee on Interstate Commerce, dated January 18, 1886, accompanying the bill, which, with some amendments, became what is known as the "Act to regulate commerce," stated that the discrimination between persons similarly situated for whom like services were performed was the most flagrant and reprehensible form of arbitrary discrimination, and constituted the greatest evil of the transportation system of the United States (p. 188). The committee pointed out that publicity was the best remedy for this condition, and that therefore the carriers should be required to publish their tariffs, and any deviation therefrom should be declared unlawful, adding that such publicity was insisted upon and practically secured in other countries and there could be no doubt that it should obtain in the United States (p. 200).

The Interstate Commerce Commission was created expressly to enforce the law, and hence to enforce maintenance of tariff rates and thereby prevent this paramount evil of discriminations through the medium of secret rates. Section 12 of the act provides that "the Commission is hereby authorized and required to execute and enforce the provisions of this act." No provisions of the act are accepted from the wide duty thus imposed upon the Commission. That Congress intended that the Commission should see to the enforcement of the act through the medium of criminal prosecutions, as well as otherwise, is plain from the provision of section 12 that "upon the request of the Commission it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute *in the proper court and prosecute, under the direction of the Attorney-*

General of the United States, all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriation for the expenses of the courts of the United States."

To enable the Commission to perform these important duties, for the discharge of which it was created, section 12 requires the Commission to keep itself informed as to the manner and method in which the business of carriers is conducted, and the Commission is given the widest possible powers of investigation. The act provides that the Commission shall "have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created," and that "the Commission shall have the power to require by subpoena the attendance and testimony of witnesses, the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation." The Commission is given the full aid of the courts in enforcing complete obedience to subpoenas issued by it or by any commissioner. The right of the Commission to this aid from the courts has been affirmed by the Supreme Court of the United States. By the act of February 11, 1893, no person shall be excused from attending or testifying or answering any lawful inquiry, or producing books, papers, tariffs, contracts, agreements, and documents, in obedience to subpoena or lawful requirement of the Commission, on the ground that so doing may tend to criminate him. This act has likewise been upheld by the Supreme Court of the United States. The Commission may not only hold sessions anywhere in the United States, but, by one or more of its members, may prosecute any inquiry necessary to its duties in any part of the United States, into any matter pertaining to the business of any common carrier subject to the provisions of the act.

It is impossible to conceive a broader or more explicit duty than that which rests upon the Commission to enforce the provisions of the act against secret rate cutting, or broader powers than are given to the Commission for the purpose of enabling it to ascertain the facts and carry on the necessary prosecutions.

Nevertheless, the Commission has for a long time claimed that it was endowed with none of the functions pertaining to the detection and punishment of delinquents under the act, except such as might be exercised by a private citizen, and has evidently deprecated the idea that it should act in the capacity of a detective or prosecutor of violators of the law. Whether the duty is an agreeable one or not, it is undoubtedly a duty which the Commission is expressly required to perform. The select committee of the Senate above referred to, in explaining the reason for the establishment of a commission, said:

What is everybody's business is nobody's business, and the conclusion seems irresistible that specific enactments must undoubtedly fail to remedy the evils which they are designed to cure unless an executive board be organized for the special purpose of securing their enforcement.

And stated further that—

The sum and substance of the proposition was tersely stated by Mr. F. B. Thurber, of New York, one of the best-known advocates of railroad regulation, when he said that "we need first a specific prohibition of practices generally admitted to be wrong, together with an executive to see that the laws are executed. Laws without a police force, or a police force without laws, are equally useless." (P. 213.)

But the Commission has evidently been extremely unwilling to perform this very necessary police duty, and the prevention of secret rate cutting seems to have become largely "nobody's business," despite the careful provision of Congress to the contrary. The Commission has much preferred to devote its time and energy to making rates and to attempting to enforce its changing views as to the proper construction of the long and short haul section. Upon such questions the Commission never accepted the adverse decision of any inferior court. It persistently tested the same questions in other inferior courts, as well as by taking appeals to the appellate courts and the Supreme Court. While in criminal cases there seems to be no right of appeal by the Government, yet if the Commission had been equally as persistent in enforcing its views it would never have accepted the decision of a single district court as a finality, except, perhaps, in that district, but would have tested the same question in other district courts. There is but little if any evidence of any such persistence in criminal cases. If any district court decided against the Commission's view upon any question connected with the enforcement of the provisions against secret rate cutting, the Commission seems to have been entirely content to drop the matter there, and to advertise the added difficulties of enforcing the maintenance of tariff rates. It must necessarily result, therefore, either that the Commission was lacking in proper diligence in enforcing the provisions of the act against secret rate cutting, or it was satisfied that the district court was correct in its rulings, and in the latter event it follows that the Commission is absolutely without justification in creating the impression that the failure to enforce the provisions of the act as to the maintenance of tariff rates has been due in any sense whatever to improper decisions by the courts.

But the Commission seems not only glad to accept and advertise the most adverse possible construction of the courts as to the provisions of the act designed to prevent secret rate cutting—it goes further and absolutely misrepresents such decisions. It states in its Fifteenth Annual Report that the courts have held that to convict for paying a rebate it is necessary to show not merely that the railroad company paid a rebate to a particular shipper, but it must also be shown that it did not pay the same rebate to some other shipper, "which, as a practical matter, is almost always impossible." This statement is not true for two reasons.

In the first place, it is not impossible, as a rule, to show that some other shipper paid the higher rate; and in the second place, the decision referred to by the Commission held distinctly the contrary of what the Commission states. Inquiry at the office of the Commission developed that the case had in mind was that of the *United States v. Hanley*, 71 Fed. Rep., 672, in which the court did hold that to prove the offense of unjust discrimination there must be proof as well that a person was discriminated against as that a person was favored. The court went further, however, and expressly held that the mere fact of paying a rebate from the tariff rate was in itself an indictable offense under the statute, regardless of what was paid by anybody else.

The Commission insists that as a practical matter it is almost impossible to prove that some one paid the higher rate than a favored shipper.

The court's comment upon this idea is instructive and interesting. The court said:

This case illustrates that whatever difficulties there are in the enforcement of this act are not so much due to the law itself as to the failure of the prosecution to gather

up and lay before the grand jury the essential facts of a case. The facts difficult to obtain—the transaction between the carrier and the favored shipper—are fully spread upon this indictment. The facts not difficult to obtain—the identity of the shipper discriminated against—constitute the fatal omission. Ordinary alertness and intelligence would have avoided this pitfall. If there were in fact unjust discrimination, the grand jury ought to have had no trouble in discovering the parties discriminated against. Commercial interests discriminated against never purposely hide their complaints.

This quotation clearly illustrates the absurdity of the Commission's contention that it is impossible to prove that anybody has been discriminated against. The court clearly proves that it is possible, at least, by the exercise of "ordinary alertness and intelligence."

But even if it should be absolutely impossible to find any shipper who had paid the tariff rate, then under the very case referred to the mere fact of one shipper's having been accorded less than the tariff rate is in itself an offense against the statute, and is punishable by a fine of not exceeding \$5,000 for each offense. Since this penalty may be imposed for every shipment moving at less than tariff rates, the formidable and effective character of the penalty provided is obvious.

It is frequently contended by the advocates of the Commission's demands that the securing both of evidence and convictions is very much embarrassed by the fact that the carriers' agents may be subjected to the penalty of imprisonment, and that parties cognizant of the facts will not tell them, and that juries will not convict when such a penalty may be imposed. These considerations, however, do not hold true at all with respect to the offense of departing from the tariff rate, which under the act is punishable by a fine only. Here, then, the Commission has an opportunity to procure and prosecute indictments for charging less than the tariff rates, where it would not have to prove that any other shipper paid a higher rate, where there could be no fear of the penalty of imprisonment being imposed, and where, therefore, the principal embarrassment in securing evidence and conviction would be removed. Yet there is nothing whatever to indicate that the Commission has persistently or at all followed up this remedy. On the contrary, it has effectually succeeded in making the impression that no such remedy exists. However, while creating that impression, it seemed, at least in its last annual report, to prefer not to be in the attitude of entirely suppressing the existence of such a remedy, so, in passing, it lightly touched upon it as being an offense punishable by "a possibly nominal fine." This language shows anything but an honest and persistent purpose to enforce the law. A fine which may be as much as \$5,000, in the discretion of the court, for each offense, would not be dismissed merely as "a possibly nominal fine" by a tribunal earnestly wishing to utilize it as a means of enforcing the law. Since such a fine could be imposed in the case of each shipment moving at less than the tariff rate, the active enforcement of the law would result in a tremendous aggregate of fines, the possibility of which would undoubtedly substantially correct the evil to prevent which was the principal purpose of the interstate-commerce act and of the creation of the Commission.

These criticisms are made with the full appreciation of the difficulties attendant upon the successful prosecution of indictments, but these difficulties constitute no reason why the Commission, whose business it is to enforce the law, should not continuously and persistently try to perform its duty. If the Commission would as promptly act upon the assumption that it could possibly overcome these difficulties as it

acts upon the assumption that the fines would be "possibly nominal," there is no doubt whatever but that substantial improvement would be accomplished. Moreover, the Commission clearly indicates in its last annual report that it is practicable to prevent such gross violations of the law as it sets forth, and indicates that if the corporation were made punishable as well as its agent, if the mere departure from the tariff rate were an offense, and if the carriers' books could be inspected by the Commission or its agents the Commission would accomplish great things in correcting the evils which it depicts. But clearly the Commission will not accomplish anything of importance until it abandons its theory that it is not its business to see to the prosecutions of secret rate cutting. If it will only proceed earnestly and persistently to carry out its plain duty, it can substantially stop rate cutting now, for it is an offense to depart from the tariff rate, the Commission has the power to examine the books of the carriers, and since the offense in question is not punishable by imprisonment the principal embarrassment of convicting the agent of the carrier is eliminated. There can of course be no objection to facilitating the prosecutions still further by making the corporation liable, and even by enlarging, if that is possible, the power of inspection of the carriers' books and also the books of shippers. But the present conditions are due not to these details, but to the fundamental fact that the Commission does not perform its duty by devoting its time and energy to prosecuting these violations of the law. This supineness, if not acquiescence, with respect to these violations of the law has undoubtedly had the effect of encouraging their repetition.

Not only, however, are the secret rate-cutting conditions due to the Commission's failure to perform its duty persistently, but they are further due to the Commission having deliberately done all in its power to break down the act and make it a dead letter by continually proclaiming that the courts have made its enforcement impossible. This contention is untrue with respect to any part of the act. But there is not even the basis for a pretense that the efficacy of the act has been impaired with respect to the prevention of secret rate cutting. Yet the Commission seems to have excepted no part of the act from the reiterated statement that the courts have rendered the act worthless. Indeed, it has necessarily implied that the decisions of the courts have rendered impossible the enforcement of the provisions requiring the maintenance of rates by indicating that secret rate cutting has increased on account of decisions of the Supreme Court upon an entirely different branch of the act, although such implication is absolutely unfounded.

Certainly it is a most unique spectacle for a highly important Government tribunal, expressly charged with the duty of enforcing a statute, to refrain from substantial and continued effort to enforce its most important provisions—to advertise, in effect, that the whole law is a dead letter—and then to moralize upon the iniquities of the parties who have failed to obey that law, and on account of these violations of the law, which it ought to have prevented, to ask for the gravest imaginable extension of power. The duty on the part of the carriers and the shippers to obey the interstate-commerce act is no more imperative than the duty on the part of the Commission to enforce the act, and there has been as much violation of one duty as of the other.

The Commission's report affords confirmation of one fact that has

been repeatedly insisted upon by those who oppose its rate-making ambition and persistently ignored by those who are at work in the Commission's behalf, and that is the fact that the real evil of the traffic situation of this country is the evil of secret rate cutting. Probably the most pronounced complaint that has existed as to the enforcement of the present act is the complaint of alleged discrimination against flour in favor of wheat. Certain flour millers have on this account been especially active in attempting to develop a sentiment in favor of giving the Commission the rate-making power, having been led to believe that the exercise of that power would correct the cause of their discontent. Yet the Commission's report expressly states that these discriminations must have occurred, if at all, through departures from tariff rates. Some time ago the Chairman of the Commission indicated in a letter to the Northwestern Miller that so far as published tariff rates were concerned the carriers had complied with the order of the Commission. The only tangible evil set forth in the Commission's report is this evil of secret rate cutting. It is unnecessary here to elaborate the fact, clearly understood by everybody who takes the trouble to give the matter any study, that secret rate cutting can not possibly be prevented or restricted by power in the Commission to make rates, since there will be just the same inducement and just the same opportunity to cut rates made by the Commission as to cut rates made by the carriers. Yet the Commission, in its demand for the rate-making power, continues to make secret rate cutting the most prominent reason why that power should be granted.

The Commission again refers to "those great combinations which have been formed and are now forming, by which railroad competition, which, upon the present theory of this law, is greatly relied on to secure just and reasonable rates and facilities, will be largely eliminated," and insists that "some method should be provided by which the Government can exercise in fact that control over rates and operations which courts without number have asserted that it possesses and which many persons suppose it now exercises." The power of control which the Government possesses undoubtedly goes to the extent of prescribing all the interstate rates in the United States. This seems to be the power the Commission wants transferred to it. It will surely have that power in its fullest extent if its present demands are complied with, despite all apparent restrictions as to procedure or apparent provisions for judicial review.

The Commission began some years ago to use these combinations of railroads as an argument for transferring to the Commission the rate-making power, and devoted considerable space to the subject in its report two years ago. At that time, and since then, many such combinations have been effected, and yet its present report shows the keenest imaginable competition still existing. It shows also the pervading and controlling character of water competition, and of competition between markets which it is obviously impossible to eliminate, and which will always be tremendous factors in making rates, not only reasonable but low.

Mere general theories should not be made the basis of a grant of rate-making power to the Commission. The same theory would require that the Commission be given the power to prescribe the character of facilities, passenger and freight, the speed of trains, etc. Moreover, it is clear that the courts of the United States, with the aid

of the Interstate Commerce Commission, now have ample power to prevent unreasonable or unjustly discriminatory tariff rates.

But facts are worth a great deal more than theories. The present Chairman of the Interstate Commerce Commission, Hon. Martin A. Knapp, has stated some pertinent facts as to the results of combinations. In a letter to Senator William E. Chandler, dated Washington, October 17, 1895, and published in Senate Document No. 39, Fifty-fourth Congress, first session, Mr. Knapp said:

In the New England States the process of absorption in one way or another has gone on until there is now practically no competition in the railroad service of that section. So far as I am aware, this consolidation has not resulted in any increase in charges, but, on the contrary, has been attended by considerable reduction in rates, by improved facilities, and the better accommodation of the public. Fewer complaints come to us from that region than from any other part of the country. My observation and inquiries lead me to believe that there is less dissatisfaction with railroad charges and practices in New England than is found elsewhere in the United States, and that the people in that territory would not welcome a return to competitive conditions.

This quotation states simple and convincing facts. The favorable conditions which Mr. Knapp has described as resulting from consolidation in New England have been realized without the possession or use by the Commission of any rate-making power. Mr. Knapp's statement constitutes a striking illustration of the practical results of consolidation, and the practical compliance with the provisions of the act in the matter of reasonable rates. Such facts can not be overridden by any amount of theorizing, especially when that theorizing has as its motive the Commission's supreme ambition to wield the rate-making power, and is sought to be used as a basis for a grant of power which would make the Commission the most powerful institution in the country. In a former annual report the Commission threw out some suggestions as to the extent of this power by saying:

The amount of money involved will be much greater than that involved in the decisions of any trial court in the United States. The results will usually be of more consequence to the litigants than those of any such court.

And it further said that the judicial review to be provided "would not probably embarrass the practical operation of the law."

It is plain that the rate-making power desired would, despite all verbal qualifications, be practically unlimited, and the judicial review contemplated would ordinarily prove wholly unavailing.

Several years ago the Commission became very much offended because the courts overruled its erroneous assumptions of power as to making rates, and its construction of the long and short haul section. It indulged in public criticisms of the courts, and some of the individual commissioners did likewise in newspaper interviews and magazine articles. The tenacity with which the Commission urged these erroneous views, and, since their overthrow, has urged legislation to establish them, would, if rightly directed to the enforcement of the act, have substantially prevented the secret rate cutting which it now advertises so extensively.

The fact is, that since the courts have decided against the Commission's cherished views, the Commission has been sulking. It has done everything it could to create the impression that the courts had destroyed the efficacy of the act. It has belittled the very grave and important powers and duties created by the act. It has apparently sought to discourage attempts to enforce the act. Indeed, its whole

course leads one to the conclusion that it has preferred to see the act fail rather than succeed, apparently with the hope that if it can bring about the complete failure of the present act it can thereby secure the gratification of its ambitious desires. There has never been an earnest and continued effort to enforce the act according to its provisions. There has been practically no serious effort to enforce the provisions as to the maintenance of tariff rates, and the numerous attempts which the Commission has made in other directions have entirely forsaken the lines laid down by the act. Present conditions, so far as they are in violation of the act, show, not that the act is a failure, but that the Commission has failed to do what it could and ought to do to perform its duty and enforce the act.

WALKER D. HINES,
First Vice-President

Louisville and Nashville Railroad Company.

LOUISVILLE, Ky., *February 1, 1902.*

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Thursday, June 17, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

**STATEMENT OF MR. M. D. GROVER, GENERAL COUNSEL OF
GREAT NORTHERN RAILROAD.**

Mr. GROVER. Mr. Chairman, I think I ought to apologize for being here. I am sure that if Mr. Hill and others interested in the Great Northern Company, with which I am connected, had read the proceedings before the committee—the questions asked and the answers given—they would have seen that the objections to the bill under discussion have been sharply presented. I will speak for a few minutes with reference to the bill, and particularly respecting the rate-making power it confers upon the Interstate Commerce Commission.

Under its provisions the Commission may, upon petition and after hearing, determine what rate, relation of rates, classification, or other practice, shall be observed for the future in order to correct wrongs found to exist. When a rate involved is a joint rate, the Commission is given authority to determine the proportions in which the rate shall be shared by the several parties to it, if they can not agree among themselves in respect thereto. If, in proceedings in court to review the order of the Commission, it shall be vacated as unjust, the Commission may, without further hearing, make another order which shall be subject to the same rights of review. If the operation of the order is not suspended by the court, it remains in force while the proceedings are pending in court, and the question as to whether the order is just, lawful, and reasonable is to be determined not in the light of the facts as they exist at the time of the trial, but upon the record made by the Commission in the exercise of legislative functions. If the order is not suspended or vacated by the court, a carrier having actually observed it for the space of two years may disregard it and make rates to be substituted for it. Any party interested may file with the Commission objections to rates put in force

by the carrier. The Commission may then order the carrier to restore and maintain the rates or practice required by the original order pending its investigation, and the Commission may take such time in making the investigation as it thinks proper.

When the interstate-commerce law was passed the Great Northern Company had about 1,700 miles of railway, extending from St. Paul and Minneapolis, on the Mississippi River, across the State of Minnesota into North Dakota and to the international boundary line. Since that time the road has extended its line by construction or the acquisition of new lines an average of about 1 mile for every working day up to date. It connects with steamships running through the Great Lakes by way of a line which it controls to Superior and Duluth, and it also has contract connection with the Japanese line of steamships running from Seattle to oriental ports, and will, at Seattle, connect with ships of the Great Northern Steamship Company, now being constructed, and which will run from that port to Japan and China and become active factors in interstate commerce and the oriental trade.

Mr. WANGER. Has this extension been by the creation of new lines?

Mr. GROVER. By building and acquiring new lines, so that the construction and acquisition of new lines represents the mileage I have mentioned.

This has gone on under interstate-commerce law. The company has made and published rates under and subject to the provisions of that law. Since I have been connected with the company no complaint has been brought to my attention concerning interstate rates as an entirety or as respects any given traffic or class of traffic. Force will be added to the objections made to the bill under discussion by bringing to mind the traffic conditions surrounding the operations of the line of the Great Northern Company and calling attention to the manner in which its tariffs have been made. Tariffs are a growth; they have been made by the company, not arbitrarily, but under restrictions imposed by the interstate-commerce law, by local regulations, by many and ever-changing competitive conditions, and especially in view of the necessities of the company and the territory served by its line. Tariffs have been extended as the line has been extended and with a view, at all times, of developing the country served by the line, by affording an opportunity to reach markets under such conditions as to give a reasonable profit to shippers. Traffic has been carried under distance tariff rates, under distributing rates based upon volume of traffic from large distributing centers, and under commodity rates where general classifications could not be applied.

When the line, 510 miles in length, was opened from Minot, N. Dak., to Great Falls, Mont., in 1888, there was not a town or settlement on it, except Fort Benton on the Missouri River. The first train left St. Paul for Puget Sound on the 18th day of June, 1893. From Pacific Junction, in Montana, to Puget Sound—a distance of over 800 miles—there was not, when the line was completed, a settlement except at Bonners Ferry, the city of Spokane, and a few houses at points west of that city. The road extends from the Mississippi River and Lake Superior to Butte, Mont., and Seattle, in Washington. The country served by it is sparsely settled; the traffic which it affords is of small value compared to its bulk; the merchandise traffic into the country is small. Thus the company was and is confronted with the

imperative necessity of building up an interstate and international traffic. Cost of construction and equipment had been incurred; transportation power had been provided; the road was ready with its equipment and men. Having power—that is, transportation facilities—to haul a maximum number of tons, if it can get the tons to haul, it sells all its power at a low rate. If it can get but one-quarter or one-half the tons the rate must be higher, because there is an operating expense which is practically the same in each case and a capital charge which is always the same.

The tariff along the line is, as I have stated, of large bulk and of small value compared with bulk. It consists of lumber, grain, live stock, wool, and mining products. It is a class of traffic which must be transported long distances from place of production to markets and at a low rate. In order to get tons to haul, and thereby reduce rates, it is necessary, as I have stated, that the company shall have interstate and international traffic. It has no direct connection with the great freight-producing area and the great markets of the country. It gets freight from such areas and transports freight to such markets under joint tariffs with connecting lines of railway and with steamships running through the Great Lakes. As respects the territory along its line, it has been compelled to adopt a rate-making policy different from that adopted on most lines of railway. The merchandise traffic into the country being light, it has been necessary to make a high, or relatively high, rate on merchandise into the country. In order to build up the country, it has been necessary to make a low rate on traffic out of it. A farmer or producer, living on the line, can afford to pay a high rate on the small quantity of merchandise he needs if he is given a low rate on grain, lumber, wool, and live stock, which, if sold at all, must be transported to a distant market. This is the way rates have been made with a view of building up the country served by the lines and to meet the peculiar conditions incident to its location and the country which it serves.

The last fiscal year the company transported to the territory served by it over 60,000 settlers; this year as large a number has been carried. The rate was low. It was an immigration rate, made with a view of inducing settlement and building up the country. This rate has been challenged. A party demanded that he should have for himself, traveling on his own account, as low a rate as had been given to induce immigration and settlement in the country. The rate was refused. Complaint was made to the Commission. In reply the company stated what it had done, leaving the matter of the reasonableness of its rates, given to induce immigration, open to be inquired into and forbidden if found to be wrong. Again, cost of operation depends upon geographical and climatic conditions. The cost is much greater upon one route than another, and much greater one year than another. This is one of the conditions that must be taken into account in making rates. It bears with force upon the point of making rates to be observed in the future for years, without power on the part of the company to change them. Three years ago there was over 120 feet of snowfall on the tracks of the Great Northern at the crossing of the Cascade Range. It melted as it fell, making raging torrents that washed away tracks and bridges.

The company is under the necessity of hauling the coal it consumes much farther than roads which run nearer to coal mines. The cost of

the fuel it consumes is much greater than on most roads in the country. The reasonableness of the rate on a given class of traffic depends upon a consideration of the rates on all classes and on the traffic as an entirety. The bill gives to the Commission power to make a schedule of rates covering classes of traffic or the entire traffic of the company and to fix classification and relation of rates and divisions of joint rates. Supposing an order is made reducing the rate on a given class of freight. If the company is not earning too much—that is, more than enough to give a fair return upon the value of its investment—and the rate on one class is reduced, the amount of reduction must be put upon another class or the company will be deprived of lawful earnings. Let us think of this matter of relation of rates. The farmer in North Dakota has a wide market for his grain. It is given to him by railroads and steamships. He is indirectly interested in rates for transporting iron, steel, coal, lumber, manufactured products as one of the factors which have created and are necessary to the maintenance of a market for what he produces.

When the line reached Puget Sound the Washington man had nothing to ship east but lumber. A rate was made which enabled him to ship lumber 1,800 miles and more to Eastern markets. The rate was so low the company could not afford to haul empty cars to Puget Sound to bring lumber back. It was necessary for the company and the Washington man that it should obtain west-bound traffic; that it should be able to get loads to haul to Puget Sound in order that cars could be taken there to bring lumber back. The rates of the company have been made and must be made to secure tonnage under conditions not existing as respects any other line of railway in the country. It has, as I have stated, connection with steamships on the Great Lakes. It moves traffic under joint tariffs with steamship lines on the lakes and under a division of the joint rate which it has been able to secure. It has a joint tariff with steamship lines on the ocean, running from Seattle to the Orient. It has secured a division of that rate. The division of joint rates obtained is a matter of negotiation to be exercised in view of rate situations and traffic conditions, concerning which the company has been free to act.

By means of the Japanese lines with which it connects it has been able to obtain loads for its cars to haul to Puget Sound sufficient to load one or two steamers a month. It has transported cotton from the South, machinery, iron, and rails from the Atlantic States and Middle West. Business has increased to such an extent as to make necessary the construction of ships, to which I have referred. The bill under discussion practically takes away from the company all right to make rates, all power to negotiate concerning rates and traffic conditions and division of joint rates. Rates depend in part upon a classification. A uniform classification can not be made covering the traffic of the Great Northern Company and of lines operated under different conditions, where density of traffic is greater and character of traffic more diversified. The cotton grower of the South needs a rate suited to the conditions under which cotton is grown and adapted to the markets where it is sold. He has little interest in the wheat and lumber rate of the Great Northern. A classification, reasonable as applied to traffic and traffic conditions in one State, may be unreasonable and ruinous as applied to traffic and traffic conditions of another State.

Referring again to the matter of the relation of rates: The exercise

of the rate-making power necessarily involves the all-important question of relation of rates, not only as respects the relation between the rates of one company, but between different companies and different markets, and also the relation as affected by carriers over which the Commission has and can have no control. The relation of rates is of great importance to all railway companies, and especially to the Great Northern Company. It is a great wheat-carrying road; it moves about one-fifth of the wheat grown in the United States. This year it will move of all kinds of grain at least 100,000,000 bushels. The wheat, or the flour made from it, finds a market both domestic and foreign. It is and must be transported under joint tariffs which must be made and changed from time to time to meet ever-changing conditions of markets, competition on the Great Lakes, and on the ocean. Transportation to the Orient must be carried on in competition with the ocean, Suez Canal, the Panama or Nicaragua Canal when built, and the Canadian Pacific Railway Company. If the company is not left free to make rates, to meet the conditions along its line and incident to its operation, and thus to build up international and interstate commerce in competition with the world, it can not develop the country through which its lines extend.

Looking into the future, apprehending the necessity for increased tonnage, competitive conditions which must be met by rail and ocean, is it wise to take away from the company the right to, at all times and under all circumstances, make rates, fix their relation subject to the power of the Commission and its obligations as a carrier under existing laws? The question involves, as respects international traffic, competition with the world. The power to make rates is the power to build up or destroy. It controls exports and imports. As one of the committee suggested, where could money be obtained with which to build and equip railroads if the power to make rates is taken away from those who have built the railroad and those who operate it and who, better than anyone else, understand the necessities of the roads they operate? What would become of the incentive which prompts individual effort, and has stimulated that commercial activity and business force which has made the railways of the country what they are, should the power to fix rates, that is, to regulate the earnings of railways, be given to the Commission?

The territory served by the Great Northern Company is being settled, towns are growing, mills are being constructed, traffic is increasing; in short, the country along the line has prospered. Is it wise to take from Mr. Hill and the traffic men employed by the company the power to make rates and adjust their classification and turn the matter over to the Interstate Commerce Commission? Is there a railroad company in the United States from which, under all the circumstances, the right to make rates and fix the relation of rates should be taken for the purpose of giving it to the Interstate Commerce Commission?

Bearing further upon this question, let me call attention to local regulations. Minnesota is a large wheat-producing State; the company earns about \$5,000,000 on traffic local to the State; it hauls, as Mr. Fletcher will tell you, millions of bushels of wheat raised and marketed in the State. In the State of Washington there is a long haul. The wheat fields are in the east and the markets are in the western part of the State. The Great Northern and its proprietary lines extend into nine States. There are railroad commissions in Minn-

nesota, North Dakota, South Dakota, Iowa, and maximum rate statutes in Washington and other States.

There is always the question of the relation of rates and their reasonableness as respects local and interstate traffic. The company has been operating its line and making rates subject to the interstate commerce law. Anyone complaining of its published rates, instead of incurring the risk and expense of beginning suit and proceeding in court, may complain to the Commission and claim damage and ask that the wrong complained of be enjoined. The Commission may investigate, and when complaint is made it becomes its duty to investigate and to make an order forbidding the continuance of wrong and awarding damages if, in its judgment, damage has been sustained. The damage, if any, growing out of excessive rates would be the difference between the rate charged and a reasonable rate as fixed by the Commission for the service. If an order of the Commission awarding damages or forbidding acts as unlawful is not obeyed, it may commence proceedings in court to enforce its order. Its findings of fact are *prima facie* correct. The burden of proof rests upon carriers proceeded against by the Commission to satisfy the court that the findings of fact made by the Commission are erroneous and its orders unjust. All the power of the court is behind the Commission to procure the attendance of witnesses and the production of papers and records.

The Commission is a prosecuting body; it is inquisitorial; it sends its agents around the country to make inquiry; it may inquire where it pleases and when it pleases. It is its duty, in making inquiry, to demand of railway companies that they produce papers and records. A person claiming to be injured need not make complaint. Complaint may be made by any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society. Any body, politic or municipal, may complain of anything done, or omitted to be done, by a carrier subject to the provisions of the act and in violation of its provisions, and the complaint will not be dismissed because of the absence of direct damage to the complainant. The Commission may proceed to investigate of its own motion, or upon the complaint of the railroad commission of any State. If it finds that injury or damage has been sustained by those complaining, or by other parties, in consequence of the violation of the law, it is its duty to order the carrier guilty of the wrong to cease doing wrong and make reparation for a wrong done. It may proceed as I have stated to enforce its orders in court; it may commence suit to restrain violation of the law. The Commission is not only authorized, but required, to execute and enforce the provisions of the act.

I speak of this to show the restraint imposed upon carriers by the existing act and to show that as respects rate regulation the existing law needs no amendment. If rates are unreasonable they may be restrained. Investigation is had, prosecution for the recovery of damage growing out of the violation of law may be conducted at the expense of the Government without cost or risk to parties injured, and counsel fee must be paid by carriers in event they are found to have violated the act. When an order is made, carriers must obey or get rid of it.

Again, there is publicity. Railway companies do not derive their being from the Government, but from the States in which they are incorporated. Under the interstate-commerce law they must report

to the Commission the amount of bonds and stock issued and sold, what has been done with the money, the cost of operation, and gross and net earnings. They have but one thing to sell, and that is transportation, and the price charged for it is published in the form of printed schedules, open to everybody. It has been found difficult to obtain evidence of secret rates, cuts, and rebates.

Secret rates and cuts can, of course, be proven only by getting those who are in the secret to disclose it. If a secret rate has been given, the freight agent or some traveling agent of a railway company, and the shipping clerk of the shipper getting the rate, are usually parties to it. They are, in most instances, young men, boys, smoking and dining together, meeting each other socially. They will not give each other away when to do so is to open the doors of a prison. It is not human nature. The difficulty the Commission has experienced, so far as I am aware, in procuring evidence of the violations of the law has grown out of the difficulty of getting evidence to prove secret violations of published schedules. It is purely a question of policy, going to the matter of evidence to prove cut or secret rates. The existing law should be amended so as to make carriers and shippers liable to penalties and not those who serve them. Imprisonment should be abolished. Penalties should be enforced, either in criminal proceedings or in actions founded upon the statute.

Referring to the first section of the bill, I note that it requires that carriers shall set forth in connection with published schedules the terms and conditions under which traffic is to be carried. Under the existing law rate schedules must be published, thus giving notice to the public of the charge to be made, and all the public have a right to have freight transported at the schedule rate. Under the existing law a special contract may be made in respect to special service and involving special risks, and an agreement may be made to carry by special train, at a high rate of speed, and deliver in shorter than the usual time. Agreements may be made limiting liability to an agreed value, irrespective of actual value, or fixing rates upon a stipulated value, as in the case of the shipment of live stock, household goods, goods contained in boxes and packages—the value of which is not known except to the shipper. An agreement may be made requiring shippers to give notice within a specified time of a claim of injury. In short, the present law leaves carriers free in the exercise of their common-law rights to make special agreements. The amendment in question forbids and makes penal agreements for unusual service or in respect to collateral matters referred to unless the terms and conditions are anticipated and stated in public schedules. To do this is impossible.

As I have stated, no complaint has been brought to my knowledge challenging the reasonableness of the interstate rates of the company. Complaints have been made in two or three instances involving the relation of rates. The system of rate-making is in many respects necessarily different on different railroads. Roads running out of Chicago have maintained, in some respects, a different system of rate making from that adopted by the Great Northern and Northern Pacific Company. The rates of the former are lower on merchandise into the country and higher on grain out than the rates of the latter. In 1888 a proprietary line of the Great Northern was constructed into the territory served by the Chicago and Northwestern Company and

the Milwaukee Company. The line now extends to Yankton, S. Dak., Sioux City, Iowa, to O'Neill, in Nebraska. It extends through Pipestone, Marshall, and other towns in Minnesota, with which Mr. Fletcher is familiar. The company found that its merchandise rates were higher than the rates of the Chicago lines into the same territory. The grain rates in force on its main line were lower than the rate on those lines. If the company had made to the territory common with the other lines the same rate for 100 or 200 miles that it had in force from the wheat fields in the Red River Valley, it would have compelled a radical change of rates by the other companies, far-reaching in its effect, for rates are so related that a reduction in one place from a common territory, or upon one class of traffic by one company, may prove very harmful and injurious to another company and to its patrons.

The necessities of one line are different from the necessities of another. There is a wide difference of conditions in markets, in operation, in the flow of traffic and its density. The Minnesota commission inquired into the matter of relation of rates into the territory I have referred to. The Great Northern put in force rates not in all respects like those in force for the same distance on its main line, but such as were mutually agreed upon as reasonable in view of the situation of the three lines in a common territory. The Chamber of Commerce of Minneapolis made complaint to the Interstate Commerce Commission that the grain rates from South Dakota points to Duluth and Superior were too low as compared with the rate to Minneapolis from the same points. It was claimed that the Duluth miller, whose mill was located on the lake, had such rates on wheat as enabled him to manufacture into flour, load it from mills on boats, and place it in the market at a cost less than the Minneapolis miller paid because of the necessity he was under of transporting flour by rail 150 miles to the lake. An order was made fixing the relation of rate between Minneapolis and Duluth, but it could not be enforced. The line of the Northern Pacific was the same in length from North Dakota grain fields to Minneapolis and Duluth. It could not be compelled to charge more to one city than the other for the same length of haul. The Great Northern line was at that time longer to Duluth than to Minneapolis by 80 miles. It could not make a higher rate from the same territory to Duluth than the Northern Pacific without abandoning the traffic. This condition controlled the situation, and the millers who had been active in making the complaint and in prosecuting it joined with the railway companies concerned in a request to the Commission for a modification of the order, and it was modified pursuant to a mutual understanding.

I think I have referred to all the complaints made against the Great Northern Company since my connection with it as respects the reasonableness of rates or their relation.

Mr. STEWART. And then your argument is that you can not practically publish your rates successfully?

Mr. GROVER. No, sir; that is not my contention.

Mr. STEWART. You can not under the present law without having secret arrangements?

Mr. MANN. No; that is not the point.

Mr. RICHARDSON. In connection with the paragraph of the bill as to what you say is objectionable, you would strike out those words and

leave the law as it is, then, if I catch your idea; you would remedy all the defects that are complained of by imposing a penalty on the railroad company instead of the boys that smoke together and eat together?

Mr. GROVER. Yes, sir.

Mr. TOMPKINS. Railroad and the shipper?

Mr. GROVER. Yes, sir.

Mr. RICHARDSON. That would be a penalty on the railroad and not on the boys who eat together and smoke together?

Mr. GROVER. That is the idea.

Mr. RICHARDSON. Do you think it fair to put it on the shippers? If a man goes to a railroad and gets the secret rate, why not let the penalty apply simply to the railroad?

Mr. GROVER. The rate must be published. The company can not help that. It is prohibited from charging a greater or less rate than that published and at the time in force. This the law has provided as a wise public policy. The company is forbidden to charge or accept a rate less than that published, because the published rate for the time being is the legal rate. When a shipper knows what the published rate is—knows that it is the duty of the company to maintain it, that the law so declares—ought he not be punished if he becomes a party to the violation of the law by soliciting and accepting an unlawful rate?

Mr. ADAMSON. He seduces the railroad; he ought to be punished for leading the railroad astray.

Mr. GROVER. Yes, sir.

Mr. MANN. Probably he does not know half the time what the railroad's published rate is.

Mr. GROVER. Of course to punish one unless he knows what the published rate is and willfully becomes a party to the violation of the law is not the idea. As this bill reads, it would punish the shipper if he violated the law or joined in its violation by fraud or any fraudulent device.

Mr. RICHARDSON. Your difficulty is getting evidence to prove the secret rebates. You can not get these boys to testify. Suppose the penalty is put on the railroad and the boy is brought up, would not you have the same difficulty, would not the influence on him be such that he would not testify—he would want to keep his place?

Mr. GROVER. I do not think so. Because you know that an oath has weight.

Mr. RICHARDSON. I am disposed to believe the penalty is the right thing.

Mr. SHACKLEFORD. Leaving aside the moral question, would it not be easier to enforce that penalty if it were simply against the railroad and nobody else?

Mr. GROVER. That might be so.

Mr. FLETCHER. I would like to ask you this: I understand your roads have been built without Government aid or subsidy?

Mr. GROVER. Yes; except the original road, that section limited to the State of Minnesota.

Mr. MANN. The Northern Pacific has a subsidy?

Mr. GROVER. The Northern Pacific had an immense land grant.

Mr. MANN. Mr. Hill was interested in that.

Mr. GROVER. He did own before he sold to the Northern Securities Company something like ten or twelve millions of Northern Pacific shares.

In reference to the question of publication of rates. Being published, it is the law that they must be observed. What I contend is that the law can be enforced and violations of it punished and restrained under the provisions of the law as it now reads, and that secret rebates may be proven with less difficulty than now exist by amending the law in the form suggested. It is made the imperative duty of the Commission to enforce the law. Any violation of it may be investigated and prosecuted, with or without complaint to the Commission, by proceedings to enforce orders of the Commission and by direct proceedings begun by the Commission by suit in equity or otherwise. If rates as published violate the long and short haul clause; if they are unjustly discriminative between persons or places; if they are thought to be too high, the Commission may, without complaint, investigate, make orders, and institute proceedings to enforce them, in which its findings of fact are *prima facie* correct. I have not discussed the provisions of the act relating to proceedings in court to review the rate orders of the Commission. I have tried to show that the power sought involves the right to make all rates, all classifications, fix the relation of rates between companies, markets, and cities, and that the relation of rates as respects interstate and international traffic is a matter over which the Commission has and can have no jurisdiction as respects ocean carriers and as respects many conditions necessarily connected with the traffic.

When a tariff is found to be unreasonable and there is need of adjustment, who can best determine the question under all the circumstances and conditions? Should it not be left with those who are operating railroads, trying to build up the territory served by them? There is a common interest between carriers and the public they serve. The prosperity of patrons of the railroad company means business and profit to the company. Mistakes may have been made, wrong may have been done. Will the mistakes be fewer and the wrongs less if the Commission is given the power sought? Take the Interstate Commerce Commission reports, strip them of useless padding in the form of evidence, briefs, and the like, and the questions which have been before the Commission of real importance, and the complaints made, will not fill many volumes. Complaints and rulings as to the reasonableness of rates do not fill many pages, and why? Because the public has been well served. There may have been mistakes, injustice may have been done, but in the main the duty of rate making has been well performed. Railroad mileage has extended, classifications have been reduced, the number of through rates increased, the service has in all respects been improved, and the business interests of the country depending upon the railways have prospered.

MR. RICHARDSON. Do you not believe that the relation between the railroads and the public has greatly improved during the last ten years under the present law?

MR. GROVER. Greatly. Because the Commission is a body to which the public can apply in the most informal way and seek redress where claim is made that wrong has been done. The Commission has authority to investigate and prosecute complaints of violation of the law at the expense of the Government and without risk or expense to a complainant. As respects the relation between the railway and the public, there is nothing more useful than investigation and publicity. I venture to say that of the complaints made to the Commission, and

called to the attention of the carriers, eight out of ten have been adjusted to the satisfaction of all parties. Railway companies can not maintain unreasonable rates or carry on their business in violation of law. Public sentiment is, after all, the great controlling force.

I thank the committee.

STATEMENT OF STUYVESANT FISH.

NEW YORK, *May 13, 1902.*

Hon. W. P. HEPBURN,

*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

MY DEAR SIR: The printed copy of the hearings before your committee on bills to amend the interstate commerce law (H. R. 146, 273, 2040, 5775, 8337, and 10930) contains at page 229 the following in the statement of Hon. Charles A. Prouty, Interstate Commerce Commissioner:

I have in my hand here an article written by a gentleman named Kuneth. I do not know him, but I have taken this from the *World's Work* for February, 1902. I say I do not know him, and I attach no particular importance to his opinion, but I use these tables merely for the sake of reference.

Mr. Prouty then went on to describe what that article shows, and after mentioning various large railroad systems said, at page 230:

That leaves the Harriman system, which is set down here at 21,000 miles, and in respect to that I will say we know that from sworn testimony given by Mr. Harriman before our commission.

Mr. Prouty further said:

You have left the Atchison system, the Rock Island system, the San Francisco, and the Milwaukee, and those are the only important independent systems there are.

A copy of the *World's Work* for February, 1902, is before me. It contains on pages 1775 et seq. an article by M. G. Cunniff on "Increasing railroad consolidation," and a map entitled "The railroads of the United States, showing the five great groups of roads each controlled by a single interest." On this map there are marked in red what Mr. Cunniff calls the "railroad lines controlled by Harriman-Kuhn-Loeb & Co." Among them are included the railroads which are operated by the Illinois Central Railroad Company, and by the Yazoo and Mississippi Valley Railroad Company, respective. Of each of those corporations I am president, and have been ever since 1887, the year in which the Interstate Commerce Commission was created.

I should not venture to trouble you with correcting the statement made by Mr. Prouty, if it were based solely on Mr. Cunniff's article, but as Mr. Prouty said that in respect to the so-called Harriman system, in which Mr. Cunniff includes the Illinois Central Railroad and the Yazoo and Mississippi Valley Railroad, "we know that from sworn testimony given by Mr. Harriman before our Commission," it becomes necessary for me to let you know how far Mr. Prouty has been misled.

The facts are that neither the Illinois Central Railroad Company nor the Yazoo and Mississippi Valley Railroad Company has any relation whatever to the so-called "Harriman-Kuhn, Loeb & Co. syndicate," or any other syndicate, further than this: That the names of

Messrs. Kuhn, Loeb & Co. stand registered on the books of the Illinois Central Railroad Company as holding a few shares, and that Mr. E. H. Harriman is not only a stockholder, but is and has been a director of the Illinois Central Railroad Company for nearly nineteen years—i. e., since May 30, 1883. Mr. Harriman also was at one time, but is not now, a director of the Yazoo and Mississippi Valley Railroad Company. No member of the firm of Messrs. Kuhn, Loeb & Co., nor anyone representing them, has ever been a director of either the Illinois Central Railroad Company or of the Yazoo and Mississippi Valley Railroad Company. Mr. Harriman is not an officer of the Illinois Central Railroad Company, and has not been for more than twelve years past, although he was for a time associated with me as vice-president of the Illinois Central Railroad Company—from September 28, 1887, to October 20, 1890.

Further than as here stated there is no relation whatever between Mr. Harriman or Messrs. Kuhn, Loeb & Co. and either the Illinois Central Railroad Company or the Yazoo and Mississippi Valley Railroad Company. Neither of those corporations has ever had any interest whatever in any of the railroads of which Mr. Harriman is an officer, nor have I personally had such interest.

Each of our railroads begins at New Orleans, the foreign commerce of which exceeds in value that of any other port in the United States, New York alone excepted. The Yazoo and Mississippi Valley Railroad ends at Memphis, which in 1900 had a population of 102,320. The Illinois Central goes to Chicago, the second city in population; to St. Louis, the fourth; to Louisville, the eighteenth, and ends at Omaha, a city of 102,550 people. Taken together these two railroads serve various parts of each of the ten States of Minnesota, Iowa, Missouri, Arkansas, and Louisiana, and of Wisconsin, Illinois, Kentucky, Tennessee, and Mississippi, which border the Mississippi River on its right and left banks, respectively, from its sources to the Gulf of Mexico.

The last annual reports of our two companies for the year ended June 30, 1901, show that they then had in operation 5,356 miles of railroad, being 2.79 per cent of all the mileage then operated in the United States, and that they had in that year derived therefrom a gross revenue equal to 2.73 per cent of that of all the railroads in the country.

No railroad companies are or can be more absolutely independent of outside control, more self-governing, or more free from alliances with other corporations than are the Illinois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company. They are controlled by their respective boards of directors and by no one else.

It appears from Mr. Prouty's testimony and that of Mr. Knapp that he is now absent at St. Louis. Knowing that your committee may report at any time, I avail of this opportunity of laying the facts before you and them. A copy hereof also goes by mail to Mr. Prouty, who, if called upon, will, I doubt not, be glad to correct his statement in so far as it relates to the two corporations which I have the honor to serve.

For the accuracy of the rest of Mr. Cunniff's article, and the soundness of the deductions sought to be drawn therefrom, I can and do accept no responsibility. Like Mr. Prouty, I have no knowledge of Mr. Cunniff, and indeed had never heard of his article until I read Mr. Prouty's statement.

Very respectfully, yours,

STUYVESANT FISH.

THE POLITICAL ASPECTS OF GOVERNMENTAL REGULATION.

A SUPPLEMENTAL STATEMENT BY JOSEPH NIMMO, JR.

[Submitted May 22, 1902.]

Mr. CHAIRMAN: In his testimony before the Committee on Interstate and Foreign Commerce of the House of Representatives, Commissioner Prouty stated, at page 238, that 807 complaints against advances in rates or against rates which are alleged to be too high have been filed with the Commission during the last three years. A similar statement was made by Commissioner Prouty in an address delivered at Chicago on April 2, 1902, before the Illinois Manufacturing Association. On that occasion he said:

While it [the Commission] can not grant relief, there are now pending before it for investigation complaints involving millions of dollars—I think I might say millions annually.

Manifestly these statements are calculated to convey the impression that the charging of exorbitant rates is now rampant throughout the country. But this is absolutely refuted by the annual reports of the Commission, which show that during the last three years only 23 cases in all were decided by the Commission upon formal hearings, which cases embrace only 8 complaints of unreasonable rates per se. Of these the unreasonableness of only 4 was sustained by the Commission, constituting less than one-half of 1 per cent of the 807 complaints alleged to have been made to the Commission. This clearly indicates either that the Commission has been derelict in the discharge of its duties or that nearly 800 of the 807 complaints were inconsequential or outside the function of the Commission. The latter is undoubtedly the correct view of the case. Besides, the fact that not a single case of exorbitant rates has been sustained in the courts during the fifteen years of the life of the Commission raises the presumption that not one of the 4 cases of exorbitant rates in the entire United States, as determined by the Commission during the last three years, would stand the test of judicial inquiry.

The total number of cases decided by the Commission each year during the last three years, and the number of cases of unreasonable rates tried and sustained, according to the last three annual reports of the Commission, are stated in tabular form as follows:

| Year. | Total num- of cases decided. | Number of cases of unreason- able rates. | Number of complaints of unrea- sonable rates sustained. |
|-------------|------------------------------------|---------------------------------------------------|------------------------------------------------------------------------|
| 1899..... | 5 | 1 | 1 |
| 1900..... | 8 | 4 | 1 |
| 1901..... | 10 | 3 | 2 |
| Total | 23 | 8 | 4 |

The data from which this statement was compiled are found on pages 20 to 43 of the report of the Commission for 1899, on pages 34 to 48 of the report for 1900, and on pages 22 to 39 of the report for 1901.

Hon. Martin A. Knapp also attempted to create the same impres-

sion as to the charging of exorbitant rates, notwithstanding the fact that the statistics of the Commission indicate an average reduction of 22½ per cent for the entire country from 1890 to 1900, and a substantial reduction in the average rate in each one of the ten groups into which the railroads of the country are divided by the Commission. Mr. Knapp attempted to overcome these facts by asserting that the apparent reduction in rates is the result of a disproportionate increase in the quantity of low-grade freights, such as iron ore and coal transported during the last ten years. This statement is without any foundation in fact, the tonnage of merchandise transported other than coal and iron ore having increased faster from 1890 to 1900 than did the tonnage of coal and iron ore transported. This is explained at length on pages 24, 25, and 26 of my recent pamphlet entitled *A Commercial and Political Danger*. It is also confirmed by the traffic records of the leading trunk lines of the country east and west.

The following table compiled from the data of the Interstate Commerce Commission for the years 1890 and 1900 indicates the fall in rates by groups and for the whole country:

Revenue per ton per mile charged by railroads of the United States according to statistics of the Interstate Commerce Commission.

| | 1890. | 1900. | Reduction. |
|--------------------|---------------|---------------|------------------|
| | <i>Cents.</i> | <i>Cents.</i> | <i>Per cent.</i> |
| Group I..... | 1.373 | 1.152 | 16 |
| Group II..... | .528 | .613 | 26 |
| Group III..... | .696 | .546 | 21 |
| Group IV..... | .844 | .595 | 29 |
| Group V..... | 1.061 | .808 | 24 |
| Group VI..... | .961 | .806 | 16 |
| Group VII..... | 1.360 | 1.064 | 22 |
| Group VIII..... | 1.152 | .964 | 16 |
| Group IX..... | 1.308 | .938 | 28 |
| Group X..... | 1.651 | 1.067 | 36 |
| United States..... | .941 | .729 | 22½ |

Data in the column for 1890 is from the statistics of the Commission for 1890, page 72, and the data for 1900 is from statistics of the Commission for 1900, page 95.

The facts thus stated prove beyond all doubt that in all our splendid American railroad system, embracing about 200,000 miles of road, over which moves about \$25,000,000,000 worth of merchandise annually, or more than twice the value of the entire railroad system of the country, and involving millions of transactions every year, only 3½ cases a year of unjust discriminations were proven in formal hearings before the Commission during the ten years from April 16, 1890, to April 16, 1900, a fact stated by the Interstate Commerce Commission in Senate Doc. No. 319 of the Fifty-sixth Congress, first session. Of this small number less than one case a year of unjust discriminations was sustained by the courts. Furthermore, not a single case of unreasonable or exorbitant rates has been sustained by the Federal courts during the fifteen years since the Interstate Commerce Commission was organized.

THE POLITICAL ASPECTS OF THE CASE.

The fact adduced by Commissioner Prouty that during the last three years 807 complaints of unreasonable rates were filed with the Com-

mission, of which only 4, or less than one-half of 1 per cent, were found to be well founded, has a much more important significance than the members of the Interstate Commerce Commission seem to have imagined. It serves to illustrate a fact of controlling force respecting the broad subject of regulating commerce among the States, namely, the fact that from the beginning the complaints which have been filed with the Commission have had their origin chiefly in the discontent incident to struggles for commercial advantage. But such discontent is the chief stimulant of commercial enterprise. It involves problems which must be wrought out by human intelligence and enterprise and not by any sort of governmental interference; for we live in a world in which we are all debating. Every individual, and every section, State, city, county, town, village, and hamlet in this country is at rivalry with competitors near and far and it is preposterous for any governmental agency to attempt to reconcile those antagonisms. They are intangible to any sensible or just method of governmental regulation. The exemption of such antagonisms from governmental interference is a natural and proper expression of the freedom of commercial and industrial intercourse.

Faith in the conservatism, which inheres in the untrammelled interaction of commercial forces has begotten the maxim "competition is the life of trade," a maxim which has found its way into our statute laws and has become a tenet of judicial faith and practice. So firmly are the people of this country imbued with this sentiment that for nearly an hundred years after the founders of our Government had incorporated into the national Constitution the provision that "Congress shall have power to regulate commerce among the States," no systematic attempt was made to exercise that power, and clearly owing to the danger attending any attempt to meddle with a commercial interaction which is not and can not properly become the subject of governmental concernment.

But at last by the act to regulate commerce approved February 4, 1887, an apparent but limited and clearly defined exception was made to this policy of noninterference with commercial struggle. The restraints provided by that act, however, applied exclusively to the struggle of railroad transportation and not to the struggles of trade or of industrial pursuits. Moreover, the restraints imposed by the statute had already become approved as proper methods of railroad self-government after the various lines of the country had become closely connected and cooperative members of one great transportation organism—the American railroad system. As such, these restraints constituted a part of the American common law of the highway, being based upon the lessons of experience and that consensus of public sentiment which Lord Bacon has characterized as *leges legum*.

Unfortunately, and as subsequently was proved, without any sanction of law the Interstate Commerce Commission assumed, in the maximum-rate case decided by it in the year 1894, that the act to regulate commerce authorized it to prescribe both absolute and relative rates for the future. This assumption of authority clearly and inevitably embraced the power to determine the relative commercial status of competing cities, towns, States, and sections affected by that decision. This monstrous assumption of political power was denied by the Supreme Court of the United States in the year 1897 (167 U. S., 479.) But not satisfied with this judicial determination of the case, the Commission has ever since importuned Congress to grant to it the

desired power. That demand is involved in the Corliss bill. It is a political heresy which should be resisted in its beginning, and under every guise and pretense of restraint.

That the attempts of the Commission to secure the rate-making power intentionally and of necessity involves the Eutopian idea of securing control of the internal commerce of the country is evident from the utterances of the Commission during the last ten years, but perhaps nowhere more strikingly than in the following declaration found on page 10 of its seventh annual report:

To give each community the rightful benefits of location to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonably just to both shipper and carrier is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation.

This expression of its "high ideal" of the work of regulation is a clean-cut proposition by the Commission to commit the Government of the United States to the task of determining all the difficulties involved in the commercial and industrial interaction of the wealthiest, the most enterprising, and the most virile nation on the globe, a matter with which the Government should not meddle. As such it is rank political heresy. It is also wildly impractical and revolutionary.

The fact that of the 807 complaints of unreasonable rates filed with the Commission during the last three years only four, or less than one-half of 1 per cent were susceptible of demonstration under known principles of adjudication indicates that about 400 of the 407 complaints were of the sort which can not be made the subject of governmental concernment. This clearly exposes the absurdity of the proposition "to give each community the rightful benefits of location," to adjust the commercial and industrial interaction of this great and growing nation, and to accomplish that purpose by setting up at the seat of the National Government a bureau endowed with the function of prescribing rates for the future with the chimerical object in view of "keeping different commodities on an equal footing" throughout the length and breadth of this land. This is a wide departure from the views of public policy touching the interaction of commercial and industrial forces which were entertained by the founders of our Government, which operated as a barrier to any sort of regulation for ninety-eight years, and which are dominant in this country to-day.

As a further illustration of the fact that the complaints which are addressed to the Interstate Commerce Commission are mainly of the class not subject to governmental concernment, the fact may be mentioned that in its last annual report the Commission said:

The total number of proceedings brought before the Commission during the year was 340. These include formal as well as informal complaints.

But only ten decisions were rendered by the Commission during the year on formal proceedings, only two of which involved unreasonable rates. In a word, the complaints of all sorts brought to the notice of the Commission had their origin mainly in commercial and industrial conditions completely outside the purview of governmental regulation.

I think, Mr. Chairman, that if you will carefully review the testimony of all the representatives of the various trade and industrial bodies who have laid their grievances before you at these hearings, you will find such grievances to be of the intangible character just described, being merely expressions of struggles for commercial ad-

vantage, and not based upon any clearly defined errors or acts of injustice on the part of the railroad carriers. An appreciation of this fact seems to have been indicated by the repeated demand of members of this committee for definite information tending to justify the passage of the bill now under consideration—a demand which, in so far as I was able to discern, was in no specific manner complied with.

It would be difficult for Congress to differentiate between complaints which are based upon the conditions of commercial struggle and those complaints which are valid subjects of regulation under the terms of the act to regulate commerce, except in general terms expressive of the firmly established policy of the Government upon the subject. The distinction in concrete cases must be based upon the specific facts which govern in each particular case. The only object had in view in this connection has been to utter a word of warning against a policy which would devolve upon the National Government full responsibility for the course of the commercial and industrial development of this country with all the dangers of sectional political struggle which would be engendered by such a departure from the principles of commercial freedom upon which our governmental institutions are founded.

There is another political aspect of the proposition to confer practically autocratic power upon the Interstate Commerce Commission to which I would here briefly allude. On pages 15 to 22 of my recent pamphlet entitled *A Political and Commercial Danger*, I stated at some length the reasons which sustain the belief that any provision of law granting to the Commission the power to prescribe rates for the future would eliminate the Federal judiciary from the function of passing upon the reasonableness of rates. This view is fully sustained by Mr. Commissioner Knapp on page 296 of the present hearing, as follows:

While the determination whether a given rate is—that it has been—reasonable or not is a judicial question, the determination of the rate to be substituted in the future is not a judicial question, can not be made a judicial question, and that authority, if exercised at all under the circumstances, must be exercised either by the legislative body itself, or by an administrative tribunal, to which some portion of the legislative power has been delegated. Now, that being so, of course you must bear this in mind, that it is incorrect and misleading to speak of an appeal from the order of the Commission.

Mr. Knapp has made a labored argument to the effect that the determination of the Commission—a mere administrative body, without permanent tenure of office and subject at all times to play of political forces—would be made in a judicial manner, and therefore would have practically the same effect as decisions rendered by the courts. This is too feeble for serious consideration. It would be superfluous to attempt any labored argument upon this point before a committee composed mainly or entirely of lawyers.

The independence of the Federal judiciary has made it the bulwark of the liberties of the people. So long as the courts have final determination of all questions of commercial right, the time-honored policy of noninterference in the competitive struggles of trade will be maintained, but when the courts are eliminated from the determination of such questions, the storm of political demand for commercial advantage will break loose, and the Commission and the political representatives of the people in Congress will bend to the blast. Besides, the sectional political struggles which would ensue from such a policy would endanger the permanence of our governmental institutions.

The exceedingly limited and in most cases utterly ineffectual way in which Commission rate-making exists in certain of the States of the Union affords no conception of the results which would ensue from placing the interstate and foreign commerce of the country under the control of a body characterized by Commissioner Prouty as "partly political, and to an extent partisan."

JOSEPH NIMMO, Jr.

RESOLUTIONS UNITED STATES EXPORT ASSOCIATION.

At a meeting of the directors of the United States Export Association, representing in its membership leading houses in 98 principal lines of industry situated in 34 States, held at No. 90 West Broadway, New York, May 8, 1902, the following resolution was adopted unanimously:

"*Resolved*, That the extension of our foreign trade, especially in the heavy products of the field, forest, mine, and factory, depends in a great degree upon transportation charges, and, in the opinion of this association, the steady growth of our export trade is largely due to the fact that our railroad freights are much lower than those of other countries; that these have been reached through intelligent management and a reasonable elasticity in rates, which permitted meeting the varying conditions of foreign markets; that the interests of our domestic trade are not injured by our transportation lines making lower rates for export than for home trade, but, on the contrary, are benefited, just as they are by manufacturers selling their surplus abroad at less than at home, thereby keeping labor, capital, and machinery fully employed, and decreasing cost through increased volume of business.

"We are therefore opposed to increasing the powers of our Interstate Commerce Commission in the direction of making or controlling rates, believing that with full powers of investigation and its present power to appeal to the courts to decide what is a reasonable rate the public interest will be best subserved. We believe, however, that the evil of unjust discriminations would be minimized if railroads were allowed, under proper supervision and control by the Interstate Commerce Commission, the same right of contract enjoyed by all other corporations and individuals to make and enforce their agreements on each other which they are now debarred from doing by the prohibition of pooling in the interstate-commerce law and by the Sherman antitrust law as interpreted by the Supreme Court of the United States in the trans-Missouri and Joint Traffic Association decisions. We therefore deprecate the passage of bill H. R. 8337, unless amended to conform to the foregoing principles.

"*Resolved*, That we fully indorse the views in regard to this bill submitted by the president of this association to the Committee on Interstate and Foreign Commerce of the House of Representatives, April 24, 1902."

Attest:

HYLTON SWAN, *Secretary*.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, February 4, 1902.

The committee met at 11 o'clock a. m., Hon. W. P. Hepburn in the chair.

**STATEMENT OF MR. EDWIN M. ADAMS, REPRESENTING THE
MISSOURI, KANSAS AND OKLAHOMA LUMBERMEN'S ASSOCIATION.**

Mr. ADAMS. We have had several meetings with the officials and brought the matter to their notice. They admitted all the facts in the case, but simply said: "What are you going to do about it?" In the first place we went to the State organizations, the State railroad commissions, and we found they were powerless to act, because they said: "Why, gentlemen, this is an interstate matter and does not properly come under our jurisdiction."

As a final resort, however, we attempted to secure a remedy in the courts. We employed the attorney-general of the State of Kansas and also one of the leading attorneys in the State and we sought to bring action against the railroads, and finally brought them to a hearing. Our committee had a conference with them, and we went over the whole matter from first to last. We threatened in all sorts of ways, both legally and socially and politically, and I think the political intimation was as strong, perhaps, as anyone we made. They admitted that we had grievances, and they admitted that they were just, but at the same time thought we had no recourse, and we were aware that the interstate-commerce law was lame. We had taken the advice of the best Kansas lawyers, both politically and legally, and found that difficulty in the interstate-commerce law.

The CHAIRMAN. What is that difficulty?

Mr. ADAMS. The difficulty in the interstate-commerce law is that the Commission has no power to enforce its decrees in these matters.

The CHAIRMAN. The railroads admitted the existence of discriminations?

Mr. ADAMS. Yes, sir.

The CHAIRMAN. You had the proofs of the discriminations?

Mr. ADAMS. Yes, sir.

The CHAIRMAN. Does not the interstate-commerce law provide ample relief and punishment in all cases of discrimination?

Mr. ADAMS. Our attorneys did not find it so, and another difficulty we met was that if we went into the courts it would probably be years before the case could be brought to an issue and a determination, and during this time all these abuses will be going on.

The CHAIRMAN. Did you bring suits against anyone?

Mr. ADAMS. We did not actually commence suits; no, sir. We did commence suits in the justice courts of Kansas under advice of our attorneys.

The CHAIRMAN. Under the law of your own State?

Mr. ADAMS. Yes, sir; under the common law.

The CHAIRMAN. Did you invoke the aid of the interstate-commerce law?

Mr. ADAMS. We did not. Our attorneys advised us not to do so. There was at that time—about a year ago—an amendment to the inter-

state-commerce law pending, an amendment presented by Senator Cullom, to strengthen that law and give the Commission more power to enforce the law.

The CHAIRMAN. That was the Interstate Commerce Commission?

Mr. ADAMS. Yes, sir.

The CHAIRMAN. There has been no proposition to give the courts more law?

Mr. ADAMS. No, sir; only to give the Commission power to enforce their decrees.

The CHAIRMAN. I can not conceive of any reason why under the statement of facts you make you could not have successfully maintained the suit. You had the proofs and the railroads admitted the discriminations, and the law punishes them.

Mr. ADAMS. We had the proofs of that abuse, but it seemed to us from the knowledge we were able to get in every way that the best thing we could do was to use some means—what little influence we had with Congress—to amend the interstate-commerce law.

The CHAIRMAN. What is the amendment you desire?

Mr. ADAMS. We have none drafted, but the amendment that was presented by Senator Cullom seemed to fit the case.

The CHAIRMAN. You want the power of the Commission increased to what extent?

Mr. ADAMS. I notice that the President has recommended that the interstate-commerce law be amended. I presume you are all familiar with this message.

The CHAIRMAN. You favor legislation on the lines suggested by the President?

Mr. ADAMS. I think we do.

The CHAIRMAN. How far do you want this committee to go in its recommendations?

Mr. ADAMS. We wish the committee to look this matter over, look it through, and formulate such an amendment as will correct the difficulties we, as well as other people, are laboring under. I will read a few lines from the President's message:

The act should be amended. The railway is a public servant. Its rates should be just to and open to all shippers alike. The Government should see to it that within its jurisdiction this is so, and should provide a speedy, inexpensive, and effective remedy to that end. At the same time it must not be forgotten that our railways are the arteries through which the commercial lifeblood of this nation flows. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies. The subject is one of great importance and calls for the serious attention of Congress.

I have not the amendment that was offered by Senator Cullom in the Senate a year ago with me, but it was simply to give the Interstate Commerce Commission more power—more direct power to enforce its decrees.

The CHAIRMAN. Do you think that the Interstate Commerce Commission should be constituted a court and have the power of a court?

Mr. ADAMS. I am not prepared to say that I think so?

The CHAIRMAN. Would your association favor that amendment?

Mr. ADAMS. Our association would favor giving the Interstate Commerce Commission whatever power is necessary to make their decision in any case final, and to enforce it.

The CHAIRMAN. You gentlemen seem to have taken action in regard to this matter and formulated an opinion, and I would like to have

your opinion on this subject, as to the extent to which this power should be given. Would your association favor giving the Commission the power to establish rates?

Mr. ADAMS. I think we would, sir.

The CHAIRMAN. Would your association be in favor of giving the Interstate Commerce Commission power to issue a writ of mandamus, a writ of injunction, and issue a judgment against railway property?

Mr. ADAMS. I am not prepared to answer that question.

Mr. ADAMSON. Or would your association be in favor of giving the Commission power to punish for contempt by confinement?

Mr. ADAMS. I do not know.

Mr. MANN. Are you in favor of establishing the Commission a court?

Mr. ADAMS. Yes, sir.

Mr. MANN. There ought to be an appeal from their decision to the Supreme Court of the United States.

Mr. ADAMS. There you have an interminable situation again.

Mr. ADAMSON. Suppose that some time the railroads should get a majority of the Commission?

Mr. ADAMS. That is the difficulty we are confronted with. A year ago our committee asked the railroad committee if they would abide by the decisions of the Interstate Commerce Commission if we should bring a suit before the Commission and get a decision, and they intimated that if the decision pleased them they would comply with it readily.

The CHAIRMAN. That is probably about what the Lumber Dealers' Association would do if I went and complained that their rates were a little too high and proposed to arbitrate it by some gentleman I selected. You probably would say, if it pleased you, you would abide by the decision.

Mr. ADAMS. When we have an arbitration, we always sign up an agreement beforehand to abide by the decision.

Mr. MANN. There is ample authority in the Interstate Commerce Commission to enforce the law forbidding a larger charge for a short haul than a longer haul.

Mr. ADAMS. We thought it sufficient in the first instance, but when we came to look into it our attorneys advised us that it was doubtful.

Mr. MANN. I think you want to get new attorneys instead of coming to Congress on that point. There may be other things in the law which are objectionable—

Mr. ADAMS. We employed what we supposed to be the leading attorney in the State of Kansas.

Mr. RICHARDSON. What steps did the attorney take under this statement of facts?

Mr. ADAMS. It was only in a justice of the peace court that we could get a decision in our favor.

Mr. RICHARDSON. And you would not apply to the courts to enforce the interstate-commerce law?

Mr. ADAMS. No, sir; only under the common law where they made an overcharge in freights against some receiver of lumber.

Mr. RICHARDSON. And in each case you got a decision before the justice of the peace against the railroads?

Mr. ADAMS. We did not carry the case through. When the railroads found we were doing that to annoy them—they thought &

would be a great annoyance to them—they offered to compromise, and our committee at that time agreed on a temporary compromise with the railroads as far as the western half of the State of Kansas was concerned. By that compromise we saved to the receivers of lumber, or the people, as you might say, because it amounts to the same thing, over \$75,000 a year for the western half of the State of Kansas. That would indicate that there was a grievance, and that they admitted it, or they never would have allowed such a concession as that. They had arbitrarily raised the rates on lumber from 1 to 5 cents a hundred pounds, which is a very unusual proceeding, and which we thought was entirely unwarranted.

Mr. MANN. Would you be willing to submit to the committee the actual cases?

Mr. ADAMS. Yes, sir. Mr. Burkholder, who was intending to be here this morning, has a brief prepared and an argument. He intended to submit the case.

The CHAIRMAN. Will he submit that brief to us?

Mr. ADAMS. Yes, sir.

The CHAIRMAN. If you will submit that to us we will be glad to go over it.

Mr. ADAMS. We will.

Mr. EVANS has suggested that I read a little section in the President's message:

In 1887 a measure was enacted for the regulation of interstate railways, commonly known as the interstate-commerce act. The cardinal provisions of that act were that railway rates should be just and reasonable and that all shippers, localities, and commodities should be accorded equal treatment. A commission was created and endowed with what were supposed to be the necessary powers to execute the provisions of this act.

But he goes on to say that that supposition was not a reality.

The CHAIRMAN. The President evidently did not mean to say that anybody supposed that the Commission had power or that it would supplement the functions of the courts. There were some persons who thought that the Commission had powers that the Supreme Court said it did not have, but no one has ever said, I think, authoritatively that the courts have not power to punish for discriminations and to punish for the violation of what is popularly known as the "short and long haul clause." The courts have power. The difficulty has always been—and I have often heard discussions of the matter—the finding of proof, that they can not substantiate the facts of the discriminations or of the violations of the long and short haul clause. But here you gentlemen say you have those proofs. If you have, I will show you the law is ample and that you can bring the suits you want with certainty of beating the offenders.

Mr. ADAMS. But it will be very humiliating.

The CHAIRMAN. I do not suppose you want any special legislation for your particular business or to expedite the courts in your particular instances. The laws that the rest of us can live under you people ought to be able to get along with.

Mr. ADAMS. Yes, sir.

We thank you very much for your attention, and we will submit the brief and argument.

The CHAIRMAN. If you will file with the committee the brief we will be very glad to have it.

ADDITIONAL STATEMENT OF MR. JOHN B. DAISH.

Mr. DAISH. Answering more fully the question of the chairman concerning the relative amount of freight paid on hay and grain in official classification territory, it appeared in the evidence in the case of the National Hay Association against the Lake Shore and Michigan Southern Railway et al. before the Interstate Commerce Commission, from the testimony of Mr. Grammar, traffic manager of the road named, that for the nine months ending October 1, 1901, the average weight of a large number of cars of hay on his road was 21,800 pounds, and the average weight of grain, 49,600 pounds. An exhibit filed by Mr. Grammar showed that the averages of weight, distances, and earnings per ton per mile was as follows:

| | Average weight. | Average distance. | Average earnings. | Per ton per mile. |
|---------------|-----------------|-------------------|-------------------|-------------------|
| Hay..... | 21,800 | 243 | 18.06 | 0.0068 |
| Grain..... | 49,600 | 306 | 22.12 | .0029 |
| Apples..... | 26,200 | 241 | 19.02 | .0060 |
| Potatoes..... | 33,200 | 216 | 15.44 | .0043 |

Now this statement coming from the carriers shows that a car of grain containing about two and one-half times the weight of a car of hay, traveled one-quarter further, had an average earning of one-quarter more, and a per ton per mile rate of one-half when compared with hay. It would not be strictly accurate to suppose that these cars move from Chicago to New York, but as the distance is well known, a valuable comparison can be made on this supposition. Twenty-one thousand eight hundred pounds of hay, or an average carload, moving at fifth-class rates between these points, would produce a freight per car of \$65.40; 49,600 pounds of grain, moving on a commodity rate, which in August, 1901, was 15 cents per hundred, would produce an earning per car of \$74.40. This would, apparently, show that the earnings per car were greater on grain than on hay, particularly if one should listen to what we hear occasionally about earnings per car, but when the defendants were asked on cross-examination why a flat car rate was not made instead of the present method of making a rate on 100 pounds, it was admitted that it was not only impracticable, but uncertain and difficult to make a rate on that basis.

When the attention of the carriers was called to the greater earnings per ton per mile for hay, it was stated that it was on account of the dead weight, meaning thereby the weight of the car, and the proportion that it bears to the total weight. In each instance the weight of the car is practically the same, and, of course, in each case it costs as much to move the empty car. An average car of to-day will weigh about 30,000 pounds, so that the total weight of the car and hay will be 51,800 pounds. This would pay from Chicago to New York \$65.40, or an average of \$2.52 per ton, gross weight of car and contents. A car loaded with grain will have a gross weight of 79,600 pounds, earning from Chicago to New York \$74.40, being 1.86 per ton, gross weight on car and contents.

Referring to the figures which I have previously given, it will be seen that 26 $\frac{1}{2}$ tons of hay would produce a freight from Chicago to New York of \$65.40; 40 $\frac{1}{2}$ tons of grain, \$74.40; 28 $\frac{1}{2}$ tons of apples,

\$78.60; 34 $\frac{1}{2}$ tons of potatoes, \$99.60. It appeared in the evidence that the average engine tonnage is about 1,700 tons, so that taking the various figures which I have given, being statements made by the traffic officials, an engine could pull 53 cars of hay, producing an earning per train of \$4,120.20; 41 cars of grain, producing an earning per train of \$3,050.40; 58 cars of apples, producing an earning per train of \$4,558.80; 49 cars of potatoes, producing an earning per train of \$4,880.40. So that, independent of all other considerations, the statements of the carriers themselves would demonstrate that hay is a much better-paying freight than grain, and that it stands up pretty well with apples and potatoes, though the two latter are carried in small quantities as compared with hay, and are more or less perishable, requiring extra transportation facilities regarding time, special cars, and other matters.

One of the witnesses for the defendants was Mr. R. B. Mitchell, traffic manager of the Michigan Central Railroad, who gave figures which by the same process would show the revenue per train for grain to be \$3,360 and for hay \$4,320, making a discrepancy in favor of grain of \$960 per train, or nearly 30 per cent more for a train load of hay than for a train load of grain. And yet it has been claimed that grain is one of the most profitable carrying commodities.

STATEMENT OF BUFFALO MERCHANTS' EXCHANGE.

The original interstate-commerce act has been interpreted by the United States Supreme Court in various cases so as to greatly restrict the powers of the Commission to effectively accomplish the results intended by such act. Bills have been introduced in the Senate and House, known as Senate bill No. 3575 and House bill No. 8337, which are identical, and having for their object to confer upon the Interstate Commerce Commission authority to make effective its administrative orders and giving to the defendants the right of appeal to the United States courts, and which continue to limit the authority of the Commission to the correction of rates when it appears after investigation that such rates are unreasonable and discriminative; and these bills also repeal the provision of the present interstate-commerce act relating to imprisonment for violation of said act, and in place thereof providing for fines to be imposed for violations thereof; these amendments we believe to be essential for the proper administration of the duties and purposes of the Interstate Commerce Commission: Now, therefore,

The Buffalo Merchants' Exchange urges upon the Interstate Commerce Committee of the Senate favorable consideration of Senate bill No. 3575, and upon the Interstate and Foreign Commerce Committee of the House favorable consideration of House bill No. 8337, having for their purpose the amendment of the interstate-commerce act, to the end that favorable action may be taken thereon at this session of Congress; and that the secretary be directed to transmit a copy of this resolution to the respective committees of the Senate and House of Representatives, and the Senators from the State of New York and the Representatives in Congress from the county of Erie, requesting their cooperation in securing such legislation.

A true copy.

J. HOWARD MASON, *Secretary*.

RESOLUTIONS OF PHILADELPHIA COMMERCIAL EXCHANGE.

The COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
House of Representatives, Washington, D. C.

GENTLEMEN: At a meeting of the transportation committee of the Commercial Exchange of Philadelphia, held Tuesday, April 29, 1902, the following preambles and resolution were unanimously adopted:

"Whereas the necessity of such legislation as will give uniform inland freight rates to all shippers of like commodities and provide such penalty as will insure a full observance of the interstate commerce laws has long been apparent to every commercial locality; and

"Whereas there are now pending before the Congress several bills of amendments, each possessing its respective merits: Therefore,

"*Resolved*, That we hereby respectfully petition the present Congress to pass such legislation as will bring to the commercial interests of this country the much-needed uniform inland rates and provide effective penalties against all violations of the laws, thus guaranteeing stability of rates to those whose business is dependent upon inland transportation."

Respectfully, yours,

ARMON D. ACHESON,
Secretary.

STATEMENT OF WILLIAM R. CORWINE.

The Merchants' Association of New York, through its representative, William R. Corwine, indorses the bill now pending in Congress, known as the Corliss-Nelson bill, and respectfully urges the Committee on Interstate and Foreign Commerce of the House of Representatives to report it favorably and advocate its passage. This bill will vest in the Interstate Commerce Commission the powers which the people of the country generally believed had been conferred upon that body when the original interstate commerce act was passed in 1887. Decisions of the Supreme Court of the United States, in some of the cases which have come before it on appeal from decisions which have been made by the Commission, have shown to the public that, under the act creating the Commission, powers which were believed to have been vested in that body were not vested therein. This Commission, therefore, has no means by which it can enforce its decisions, and its decisions, therefore, are of no practical effect, either upon the shippers or carriers.

It was generally understood at the time the Commission was created that the United States, through the properly constituted legislative body, had reached the conclusion that the period had arrived when there should be some body which would stand between the carrier and shipper, and which could act as an arbiter in the questions of dispute naturally arising. This belief seems to have been wrongly founded. The Interstate Commerce Commission may issue its opinions or decisions, but they now amount to nothing more than propaganda, having no binding effect upon any person or corporation, either as shipper or carrier. It does serve a useful purpose in collating and publishing the statistics of the transportation interests of the country. These statis-

tics are very valuable. They could, however, be collated by a mere bureau, and it seems to us that that which is supposed to be a Commission with power, but which has been held not to be such a body, now serves no purpose beyond that of a clerical one. It is not a dignified position for the Commission to be placed in. It certainly is not a satisfactory position from the shipper's point of view, and I do not think can be satisfactory even to the railroad interests.

It seems to be pretty generally conceded by all who have given any thought to the subject of transportation that something ought to be done by which this Commission can have the power to make its decisions effective. The bill in question purposes to do this, and if it becomes a law it will produce results which will be of benefit to all interests involved.

I think it is generally safe to assume that the statement which I have just made is sufficiently well founded not to require argument or elaboration of any kind. There are evils which are vigorously complained of by shippers. It is possible that in many instances the complaints are not well founded. If that be so, there ought to be some means or method by which the reasonableness of the complaints could be determined and passed upon, so that the complaints, whether just or unjust, could be settled by decision of some competent body having jurisdiction in the premises.

It seems to us that it is not sufficient to say the remedy lies in the courts. The crowded condition of the court calendars in many sections of the United States is such as to make it impossible to arrive at a trial until after a long period of time has elapsed. This entails not only a great delay to all parties interested, but also considerable expense and inconvenience. A body such as the Interstate Commerce Commission, bending all its energies toward the hearing of cases in dispute between shippers and carriers, is eminently a proper body and one in which matters of this kind can be expedited.

This question has been so thoroughly discussed by the competent witnesses who have testified before your committee, and was so exhaustively gone into in the hearings that were given in the last Congress on the Cullom bill, that it seems unnecessary to waste the time of the committee or encumber the records with a long argument to demonstrate that proper authority to enforce its decision ought to be conferred on the Interstate Commerce Commission.

The Merchants' Association, which I have the honor to represent before your body, was organized primarily for the purpose of overcoming the discriminations which were operating against it through concessions granted by railroads in different sections of the country to places other than New York, and which concessions were hurting the trade of this city. The association demanded that New York be placed upon a parity with these other sections. The position assumed by the association in this matter was, after a long argument, conceded by the railroads. In this connection I am very glad to be able to state that the railroads, when convinced of this, and in making an arrangement which overcame partly, at all events, the discrepancy which existed, lived not only up to the letter, but to the spirit of the agreement which they made with us, and I am equally glad to be able to say that our relations with the railroads in this matter have been of a very satisfactory nature.

It is therefore not in any spirit of special grievance that we come

before you, nor is it for the purpose of reciting any special or specific cause of complaint at this moment. We simply believe, as a result of the experience which induced us to study the subject, that the Interstate Commerce Commission should be given the powers which this bill seeks to give it, and we appeal to you, in whose hands the remedy lies.

The opinion which we had formed on this subject was emphasized late in the year 1899 and early in the year 1900. At that time the different railway associations of the United States, headed by the Trunk Line Association, sought to increase their revenue, not by making an advance in rates, which would have been the proper thing to do, but through a change in classification, in which a large number of articles was advanced from a lower to a higher classification, and in which the difference which had existed for many years between carload lots and less than carload lots was greatly widened. This seriously affected the condition of business in the shipping world, and was the occasion of a great deal of friction. The Interstate Commerce Commission seemed to be powerless in the premises, and there was nothing left but to appeal directly to the various railroad associations.

The Trunk Line Association, having jurisdiction east of the Mississippi and north of the Ohio rivers, made some concessions in this new and arbitrary method of readjusting the classification schedule, as the result of vigorous protests which were made; so far as the other railway associations were concerned, however, the shippers were not able to make any impression which resulted in material benefit.

I do not think the business world generally would have complained had the railways openly raised their rates on the various grades of classification, but by the indirect method pursued by them they caused a great deal of annoyance, which, in some cases, amounted to the necessity, on the part of the shippers, of changing the methods which had been in vogue a long time.

Equality of rates is what is demanded by the shippers. This they are entitled to. Discriminations in the shape of rebates, drawbacks, or concessions of any nature made secretly are subversive of all proper methods of business and ought to be stopped. They serve to aid the large shipper at the expense of the small shipper. It places in the railroads the power of building up one section as against another; of advancing the interests of one body of men at the expense of others. This system is un-American. It is subversive of the principles upon which the Government itself was founded. It certainly is unfair; it certainly is inequitable. Undoubtedly the tendency of the times is toward concentration of interests of some form or other. How far this tendency is the result of natural conditions, due to the shifting of centers of manufacturing interests, is a question which thoughtful men are trying hard to solve.

This tendency certainly makes it harder for the small manufacturer or the small dealer to exist. Ultimately he is forced either into bankruptcy or into combining his smaller interests with the larger one. If this tendency is the result of natural conditions it can not be overcome; certainly this tendency should not be aided by artificial conditions which are now imposed on the small manufacturer or business man through the arbitrary and secret action of the executive officers of the transportation lines of the country.

The vesting of these definite powers in the Interstate Commerce

Commission may not do away with this evil altogether. There are, undoubtedly, many ways in which railway officials who, as a rule, are able men, may find a means of evading the law and the punishment which comes from such evasion. It will, however, in our opinion, serve to minimize this evil of discrimination, and if it will accomplish finally such minimization, there should be no hesitation in granting the powers which we now ask for the Interstate Commerce Commission.

The bill in question has been criticised because it not only gives the power to the Interstate Commerce Commission to make its orders and decisions operative from the time those orders and decisions are issued, and of continuing in force for a period of two years thereafter, but in that it thus continues them in force even though the railroads, in case the decision should be against them, should take an appeal to a circuit court of the United States from the decision or order thus issued by the Interstate Commerce Commission. In other words, that an appeal does not operate to stay the decision pending the determination of the appeal. Lawyers say that it is a reversal of the methods pursued in ordinary practice in the courts. From our point of view, this does not seem to be a just criticism. We do not look upon the Interstate Commerce Commission strictly as a judicial body, but rather as a legislative body. Take, for instance, the Treasury Department of the United States. That branch of the Government has charge of the important subject of customs. The decision of the Treasury Department in disputed customs cases holds good not only as it affects the person against whom it is rendered, but against all persons or firms to whom it might be applied in the course of their business.

The aggrieved person has the right of appeal, but until it has been decided by the court of last jurisdiction that the decision of the Treasury Department is wrong, the original decision rendered by the Department in that case stands against the parties in interest. This, we take it, is the point of view from which decisions of the Interstate Commerce Commission should be regarded. If looked upon in this light, the provision of the bill in respect to the point referred to does not seem to us to be harsh or unjust. It will work both ways, and is as fair to one party in interest as to the other.

It has also been said that this bill has been criticized severely by the transportation interests, because it does not permit the organization of railway associations. So far as this association is concerned, it does not insist that railway associations should not be formed, provided they are organized and conducted under the supervision of the Interstate Commerce Commission.

The feeling against pooling on the part of the general public is not so much the result of honestly and fairly-conducted railway associations as it is of the oppressive methods which were pursued under the old system of pooling. This system was thoroughly exposed by the investigation into transportation matters which was made prior to the passage of the original interstate-commerce act. If, however, associations for the legitimate purposes of cooperation among railway lines in competitive territory are supervised by the Interstate Commerce Commission we think that much of the criticism that has been made in the past against such associations would cease, but the public never would consent to the formation of such railway association to be carried on separately and without proper supervision by the Commission.

The Interstate Commerce Commission at present consists of five members. Under the act creating the Commission they are appointed by the President, by and with the consent of the Senate. Their appointment and confirmation being thus safeguarded, we do not see why they can not be, and, in fact, why they are not, of as high-grade men as are those who are appointed to the bench under the same method. The men now in office ought to be especially competent, because they have given all their time for several years to the study of the intricate subject of transportation and its relation to shippers, and so far as we are concerned we have confidence in the present Commission and would have confidence in new Commissioners who might be appointed from time to time in the manner prescribed by the act.

The subject of the Interstate Commerce Commission is not a new one to this association, as I have already said. The bill in question—that is to say, the Corliss-Nelson bill—was laid before the board of directors of this association at its regular meeting in December. Its provisions were discussed and it was indorsed by special resolution of the board, the board authorizing the undersigned to attend such hearings as might be given the matter in Washington and to do all it could to express the views of the board in urging the passage of the measure in question.

This association has about 1,000 members, comprising jobbers, commission men, manufacturers, and merchants of all kinds, many of whom are directly interested in this subject. The board of directors consists of 15 members, who are elected by the members of the association. These directors elect their own officers. The elections are held annually. The action of the board was unanimous.

In addition to this local membership, the Merchants' Association has a nonresident membership list, consisting of about 35,000 merchants, located in nearly every State and Territory in the United States. These nonresident members are merchants who have what is known as a credit rating. They have no voice in the management of the association, but are interested in its work, and all of them being merchants, they are deeply interested in this subject, although no direct expression of opinion has been sought on this particular subject from such nonresident membership.

Respectfully submitted.

THE MERCHANTS' ASSOCIATION OF NEW YORK,
By WILLIAM R. CORWINE,

346 Broadway, New York City.

NEW YORK CITY, *April 19, 1902.*

STATEMENT OF MR. E. P. BACON.

The COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
House of Representatives.

GENTLEMEN: I beg leave to submit the following statement in controversy of a portion of the testimony offered by A. C. Bird at the hearing before your committee on the bills to amend the interstate-commerce law, on the 29th day of April, in relation to the case brought by the Milwaukee Chamber of Commerce against the Chicago, Mil-

waukee and St. Paul Railway Company et al., before the Interstate Commerce Commission, decided January 19, 1898, in favor of the complainant, in which case the order of the Commission was not complied with by the defendants.

Mr. Bird states, in substance, that had the order of the Commission been observed by the several lines concerned it would have resulted in successive reductions in rates, first by one line and then by another, "in a regular spiral way," without changing the relation in the rates, which was the basis of the complaint. I can only account for this statement on the theory that he was at the moment in a confused state of mind, for I can not believe that he would attempt to confuse the minds of those he was addressing, who are less familiar with the ramification of rates than himself. The order of the Commission required that the difference in the rates from a given point to Minneapolis on the one hand and Milwaukee on the other should be determined by applying the interstate distance tariffs in use by two of the defendant carriers named to the short-line mileage from the point of shipment to the respective terminal points, and that such difference should be added to the Minneapolis rate in fixing the Milwaukee rate. As there can be but one "short-line mileage" between two given points, however numerous the lines, there could be no uncertainty as to what the difference in rates would be, and it would be definitely fixed for all lines concerned by the application of the rule laid down by the Commission.

Mr. Bird states that at a further hearing of the case before the Commission, held on the petition of the Milwaukee Chamber of Commerce, at which representatives of the Minneapolis Chamber of Commerce also appeared, the railway companies proposed that if the representatives of the two chambers of commerce would meet jointly and could agree unanimously upon the schedule of rates, the railroad companies would adopt the figures; which, by the way, occurred at a conference between the representatives of the several railroad companies concerned and those of the two chambers of commerce, held shortly after the hearing. I had the honor to be one of the representatives of the Milwaukee Chamber of Commerce, and the late Charles A. Pillsbury, then one of the most prominent millers of Minneapolis, was one of the representatives of the chamber of commerce of that city. With the other representatives of the two chambers of commerce, we undertook the task of fixing a schedule of differentials over Minneapolis rates to be adopted in determining Milwaukee rates from points in the territory in question, and, contrary to Mr. Bird's recollection, we agreed unanimously upon such schedule, in substantial conformity with the ruling of the Commission, and reported it in writing, duly signed by each representative, to a conference of the railway representatives held on the following day. To our astonishment, the conference refused to adopt it, owing to the determined opposition of the representative of one of the lines interested, closely allied with a Minneapolis line, although his line joined in the proposition under which the representatives of the two chambers of commerce acted.

These details are largely irrelevant to the question before your committee, but I am unwilling to have so erroneous a presentation of them, unwittingly made, no doubt, go into the record without proper correction. They nevertheless serve to show the necessity of the Interstate Commerce Commission being invested with such power as will enable it to give effect to its rulings for the enforcement of the pro-

visions of the "Act to regulate commerce," as proposed in the Corliss bill, one of the bills now under consideration by your committee. It is also due to the Commission that the implication that it issued an impracticable order in the case should be removed by a correct statement of the facts being incorporated in the record.

Respectfully submitted.

E. P. BACON.

MILWAUKEE, May 7, 1902.

WASHINGTON, D. C., May 27, 1902.

HON. W. P. HEPBURN,

*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

SIR: The following organizations have indorsed House bill 8337, to amend the act to regulate commerce, and have adopted resolutions requesting the Senators and Representatives from their respective States and districts to give the same their active support, in addition to the organizations mentioned in the testimony given by me before your honorable committee on the 8th day of April last, making an aggregate of 94 organizations located in 29 different States.

NATIONAL AND STATE ORGANIZATIONS.

Indiana Grain Dealers' Association; Massachusetts State Board of Trade; National Grange, Patrons of Husbandry; National Association of Railway Commissioners; Southern Hardware Jobbers' Association; Utah Wool Growers' Association; Western South Dakota Stock Growers' Association.

LOCAL ORGANIZATIONS.

Colorado.—Lincoln County Cattle Growers' Association.
Connecticut.—Waterbury Business Men's Association; New Haven Chamber of Commerce.
Georgia.—Atlanta Chamber of Commerce.
Illinois.—Chicago, Merchants' Association of.
Indiana.—Indianapolis Furniture Manufacturers' Association.
Kansas.—Kansas City Board of Trade.
Missouri.—St. Louis Millers' Club.
New Jersey.—Jersey City Board of Trade.
Ohio.—Columbus Board of Trade; Cleveland Retail Coal Dealers' Association.
Pennsylvania.—Philadelphia Commercial Exchange.
Wisconsin.—Muscoda Dairy Board.

Very respectfully,

EDWARD P. BACON,
*Chairman Executive Committee
 Interstate Commerce Law Convention.*

STATEMENT OF T. W. TOMLINSON.

APRIL 26, 1902.

Hon. WILLIAM P. HEPBURN,
*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

DEAR SIR: At the hearing before your honorable committee on the Corliss bill the statement was made by the president of the New York Cotton Exchange to the effect that it made no real difference to the cotton raisers whether the rate charged by the railroads was high or low. While this statement was doubtless an inadvertence on the part of the gentleman who made it, yet the live-stock industry can not permit it to remain unchallenged. The producers of the country are vitally interested in the rates paid by them or the consumer for the marketing of the products of the producers, and it is our honest belief that the great question of the future as to railroad rates will not be on the subject of discriminating or preferential rates, but will be as to reasonable rates per se.

Will you kindly have this letter appear as a matter of record, and oblige,

Yours, respectfully,

T. W. TOMLINSON,
Railroad Representative.

CAMDEN, N. J., *March 3, 1902.*

Probably there is no other subject that the American people are more interested in than a proper and agreeable solution of the conflicting and unfavorable railroad interests that seem to keep the minds of the American people in an unrestful condition. The basis or cause of most of this trouble is the result of the railroads keeping incompetent men in control of the classification committees. It is this class of men who keeps the minds of the American people in a boiling condition. In case a person is not familiar with the duty of these men, I would state they are appointed by the different railroads. Each road appoints a man to represent its interests. This committee is the controlling power of transportation, and regulates freights and classifies the different merchandise of the country. The powers and workings of this committee seem to have been overlooked both by the Government and the controlling influences of the railroads. The cause of the present remarks on the railroad situation of the country is based on the experience I am having in my business, the results of the operations of the classification committee of the roads east of Chicago, of which G. E. Gill, 143 Liberty street, New York, is chairman.

The goods I manufacture are cone tubes for winding yarn on and paper cop tubes used in spindle upon which the yarn is spun. Cone tubes are packed in dry goods cases, and cop tubes are small and are shipped in bags, the same as wool, yarns, coffee, beans, and similar articles. The railroads have been carrying these goods for at least fifty years in bags, and I do not believe there is a record held by any of the railroads where claims have been made for damages for goods in transit. The history of cop tubes shipments is without a superior record. The committee of which Mr. Gill is chairman decided to make

a new ruling in the case of cop tubes, and decided to change the mode of shipment, and ordered cop tubes to be shipped in cases, adding a cost of at least 2 cents per pound to the goods, which the business can not afford.

I have taken the position that the different goods shipped in bags were subject to the same conditions, namely, bad sewing, bad burlaps, holes, etc., and that no justifiable reason existed for selecting the tube business and placing an unjust burden on same. The question of shipping goods in bags should be dealt with as a whole, and no discrimination made.

Cone tubes packed in cases would weigh probably 15 per cent more than what cotton yarns would in equal space, and the freight on cone tubes is 100 per cent more than on yarn. In a bag of cop tubes the weight would be about 25 per cent less than in a bag of wool same size, showing unjust discrimination in favor of wool of about 57 per cent, so that the industry is unjustly and heavily taxed. A car full of paper cones nested will hold 35,000 to 40,000 pounds. There is no other article shipped that is so heavily discriminated against and freights so high. The cause probably had its origination in the fact that two roads only enter Camden, N. J.—the Pennsylvania Railroad and the Reading Railroad. I favored the Reading more than the Pennsylvania road. I was informed by a party in New England that the cause of the present trouble originated with the Pennsylvania road in making the ruling complained of. I was called upon by a representative of the Pennsylvania road and requested to ship goods by this road, but have dealt with both roads. The Reading was forced to refuse to accept my goods for shipment. The Pennsylvania road permitted me to ship goods over their road for nearly sixty days after the Reading was forced to refuse my goods.

During this period I shipped more or less goods over the Reading, and I was called upon by one of the agents of the Pennsylvania Railroad in reference to this fact. I had shipping instructions to ship via New York Central and Hudson River Railroad to Utica, and in that section I was given the option by the Pennsylvania Railroad to ship by their road to these points or the goods would not be received. That I did this is a matter of record, as the changed shipments and dates show. The facts can be sworn to. I did not permit myself to be influenced against shipping over the Reading road, and the result was that my goods were finally refused by the Pennsylvania Railroad and all over the roads east of Chicago for shipment.

One of the causes of this trouble is that the roads have men who are capable of exercising superior intelligence over the others. This is a case which shows the necessity of laws being passed controlling the operations of the classification committee or a supervision of these men's acts. There should not be permitted any changes of classification of goods or increased rates unless there be a hearing of both sides. Established rates should not be changed unless sufficient reason is given that will meet the approval of the Interstate Commerce Committee when rates are once fixed.

The country can never look forward to any satisfactory legislation in managing or regulating the shipping interest unless the officials of the Government are placed in a position where the blunders that are produced from the results of the influences of competition can be utilized to the interest of the whole country. If the action of the classi-

fication committee is not submitted to reliable advice from counsel, it is only a question of time when these conditions will be recognized, and any man who is not familiar with the laws of the country will not be permitted to act in a manner that will keep the country in an unsettled condition. The room for reformation in this respect that will command the respect of the whole nation is great. If the pressure against the Government occasioned by the rulings of irresponsible men not properly guided legally is not removed by exercising the strictest intelligence, it will finally end in a general uprising that will place men in control of this Government that will take years to recover from the disastrous effects. The people will never give up or lose sight of an undertaking intended to remove a great wrong. What the interests of this nation demand in adjusting the differences between the railroad interests and the people is laws that can be utilized by the shipping interests of the nation in prosecuting claims and remove the Government from the responsibility of performing this duty.

So long as the responsibility of the prosecution of interstate-commerce laws rest upon the Government the railroads realize that the undertaking is too great to be carried out, and will keep up continuous discussions of these matters in order to divert the attention from the fundamental principles that will successfully control these matters. Where a railroad is caught in discriminating in freight charges there should be laws passed permitting the recovery of freights paid in excess of the lower rates paid by persons shipping the same class of goods on the railroads cutting rates secretly, instead of suing for damages and criminal prosecution. It is not necessary to remove these criminal laws. A successful law of this nature will soon weigh down most all the railroads with lawsuits. There is only one way that will successfully reveal the secret cutting of rates, and that will be through competing interest of the country, and laws must be enacted that can be utilized successfully by the great shipping interests of the nation. It will require this great power to counteract the power of the railroads. These two forces must be arraigned to meet each other in a contest and relieve the minds of the American people of the annoyances brought about by men connected with railroads and who ought to be removed.

There ought to be no trouble in harmonizing the greatest interests of the nation. What the railroads require at the present time is the class of men who can accomplish this. The men who are at the heads of the railroads ought to realize the facts that their present position is one of open defiance, and it is only a question of time when the present state of affairs will not be tolerated. This snapping of the fingers at the laws has no solid foundation, and the day will come when men's minds will not be continually diverted from the vital laws that are not very distant from their intelligence. Men who hold responsible positions in railroads ought to be men who are not continually arousing the shipping interests against the railroads. There will be no trouble in making laws that will revolutionize the present conditions that ought to be advantageous to both interests.

Yours, truly,

WM. J. McCausland.

CAMDEN, N. J., *March 31, 1902.*

There is nothing more sacred to all American citizens than the liberties that their forefathers shed their blood for. One of the greatest obligations that every American owes to his country is, when these rights are threatened, to strive and protect these liberties with the same spirit and determination as was instrumental in laying a foundation for this great Government. If it is essential to appeal to every member of Congress in order to reach a responsive patriotism in case laws prove unavailable, it should be resorted to. This is a duty. It has been my custom to ship a great many goods from Philadelphia via boat to different parts of the country and ignore the railroads of this city. Whether this has attracted the attention of the agent of the Pennsylvania Railroad or not I do not know. He called at my place of business during my absence for an explanation for not shipping over his line, and it was fully explained. One of the main reasons was that I could save from 10 to 12 cents per 100 pounds.

The subject of paper tubes had been taken up by the classification committee of the trunk lines, and it was decided that such goods should be shipped in crates or boxes. As the custom was to ship in bundles, with only a couple of strings to hold them together, this of course has undoubtedly caused the railroads annoyances. Paper tubes are used for mailing purposes, and making round boxes, and various other purposes, and are extremely bulky and light. Cop tubes are an entirely different branch, and are small, used on spinning spindles, and are shipped in sacks, like wool. The railroads have carried these goods for probably fifty years. I have shipped these goods over the Pennsylvania railroad constantly for over twenty-five years without ever having had to make a complaint of any kind for damage to goods in transit. Of course cop tubes are subject to the same conditions as coffee, peas, corn, and various other articles of this nature in case there are any holes, bad sewing, or bad burlaps.

I claim the railroads had no right to select my business alone and place heavy burdens on same. After stating these facts to one of the Pennsylvania Railroad officials who was responsible for the whole matter, he requested me to file application and he would forward same to G. H. Gill, chairman of the trunk lines freight agents, which I did. My goods were refused by the Pennsylvania Railroad in sacks the same as wool is shipped. I then shipped what goods I had to ship into interior points through New York State via the Reading Railroad.

The agent of the Pennsylvania Railroad called again at my place during my absence to find out how I was shipping my goods, and he was informed the Reading Railroad was receiving my goods. The next move was made against the Reading Railroad, which is not a member of the trunk lines classification committee. Complaint had been made that the Reading Railroad was receiving my goods in bags. The Reading Railroad informed me that they would have to refuse taking any more. The Reading Railroad sent a man over to my place and made inquiries, and stated that the goods I shipped were for New York State principally, and that the Pennsylvania Railroad had got the New York Central to refuse to accept my goods at Newberry, where the goods were turned over to the New York Central Railroad, and that they were shut off and could not forward any more.

The next move made was to interfere with my shipments east. I had been doing a heavy business with the Boston and Providence Steamship Company shipping goods east. The New Haven road

informed the steamship company that they would not receive any more goods for forward shipment unless in boxes, this completely tying me up. I called on Mr. Gill in reference to the matter. He told me it was a question of business with the railroads, and wanted to know what benefits the railroads would receive if they made any change. I inferred from this that it would be essential to bind myself to the Pennsylvania Railroad and guarantee this road all my shipments. Mr. Gill read to me portions of the letter accompanying my complaint forwarded to him by the Pennsylvania Railroad official, where he (the Pennsylvania Railroad official) requested that the classification remain as it was. Everything was arranged in case I called. I could see no clear way except to submit.

The cost on \$100 worth of wool, which is about only one-fourth more in weight than tubes—and you could not distinguish them apart when standing side by side—is about \$1.60 to ship from Camden, N. J., to New Bedford, Mass., about 350 miles. The cost of cop tubes packed under the ruling of paper tubes in boxes would amount to between \$22.50 and \$25 for the \$100 worth of tubes. To my knowledge, the Pennsylvania Railroad has not a single cotton mill on its whole line which uses these goods, and it is not essential to use this road in connection with this business. I claim the right to have the advantages of shipping my goods at the lowest rate, and this is what I propose to fight for. A person can not ship a plain trunk by freight, for the reason that this business belongs to the express companies, and you must ship your trunk in a box or hire a man to crate it; consequently it is cheaper to ship by express. Shipping at owner's risk will not allow the trunk to be shipped. This shows how the classification committee rules matters.

My position is peculiar. Where my goods are most used is in New England and New York State. There are makers of goods like mine in New England, and they can deliver direct to the mill. I am about the only concern outside of New England, so that it makes the ruling severe.

It is not a question with me whether I am deprived of my rights as an American citizen by some foreign power or some railroad. The Supreme Court of the United States can see its way clear to declare laws made by the different States, where discrimination is shown, to be unconstitutional, and in so doing uphold the railroads in committing the same acts that it is condemning, made by the States. The Constitution of the United States was constructed for the preservation of human rights, and is the only way it should be construed.

Yours, truly,

WM. J. McCAUSLAND.

RESOLUTIONS UTAH CATTLE GROWERS' ASSOCIATION.

SALT LAKE CITY, UTAH, *April 7, 1902.*

The COMMITTEE ON INTERSTATE COMMERCE,

House of Representatives, Washington, D. C.

GENTLEMEN: I have the honor to inclose herewith a resolution adopted by the Utah Cattle Growers' Association in convention assembled, April 4, 1902, at Salt Lake City, Utah.

Very respectfully, yours,

WESLEY K. WALTON,
Secretary.

Whereas the operations of the Interstate Commerce Commission under the present law are absolutely worthless, for the reason that they have no power to enforce their decisions; and

Whereas there has been introduced in the House of Representatives of the Fifty-seventh Congress, by Congressman J. B. Corliss, of Michigan, a bill amending the interstate-commerce act, correcting the evils and giving the Commission power to enforce its rulings, which has the unqualified indorsement of the Interstate Commerce Commission and shippers at large throughout the country; and

Whereas the live-stock interests of the United States are heavy shippers, and therefore interested in anything pertaining to or governing transportation: Therefore, be it

Resolved, That the Utah Cattle Growers' Association in convention assembled urge the members of Congress to vote for the passage of this amendment to the interstate-commerce act; and be it further

Resolved, That the secretary of this association is hereby instructed to send copies of this resolution to the Committee on Interstate Commerce of the House, and also to write personal letters to the members of Congress and Senators from this State urging that they work for the passage of this measure.

President Utah Cattle Growers' Association.

WESLEY K. WALTON,
Secretary.

STATEMENT BUFFALO LUMBER EXCHANGE.

BUFFALO, N. Y., April 14, 1902.

Hon. W. P. HEPBURN,

*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

DEAR SIR: This exchange has been advised that a public hearing on the act to regulate commerce, known as H. R. 8337, is to be held before your committee Tuesday, April 15. It has been found impossible to send a delegation from this exchange to appear on the date mentioned before your honorable body, and I am therefore directed to address this letter to you in lieu of such representation. This exchange has already indorsed the bill referred to on several occasions by resolution, and whenever the matter has been presented to it it has gone on record as being heartily in favor of such legislation as this bill represents. It is, as we understand it, intended to give to the Interstate Commerce Commission the powers which were originally intended for it, but which have been so curtailed by adverse decisions of the Supreme Court that it is now practically powerless.

The lumber merchants represented in this exchange feel that such legislation as is contemplated in this bill is of paramount importance to the future welfare of their business. They have found that there is now no such thing as competition in freight rates, and they fear to be left in the unrestricted control of the railroads over which they are compelled to ship. What we ask is an open field for all, with a prohibition of pools intended to restrict competition, with such legislation as will forever prevent special favors to the fortunate few.

We believe that the bill referred to will accomplish results which we desire, and respectfully urge upon your committee its prompt report to the House for favorable consideration.

Yours, respectfully,

KNOWLTON MIXER, *Secretary.*

RESOLUTIONS OF INDIANA GRAIN DEALERS' ASSOCIATION.

CAMBRIDGE CITY, IND., *January 24, 1902.*

Hon. JAMES J. BUTLER,

House of Representatives, Washington, D. C.

DEAR SIR: In compliance with the instructions of the Indiana Grain Dealers' Association in their convention at Indianapolis, Ind., January 8, I herewith inclose you copy of resolution passed.

Soliciting your support of the same, and assuring you that any evidence thereof will be heartily appreciated, I am,

Yours, very respectfully,

S. B. SAMPSON,

Secretary Indiana Grain Dealers' Association.

Resolution adopted by the Indiana Grain Dealers' Association, at Indianapolis, January 8, 1902.

Resolved by the grain dealers of the State of Indiana in convention assembled, That we recommend the passage of the amendments contained in the Bacon bill for the purpose of regulating the interstate-commerce law now before the Congress, and that the secretary be instructed to mail a copy of these resolutions to each member of Congress and the Senate.

STATEMENT BLACKWELL MILLING AND ELEVATOR COMPANY.

BLACKWELL, OKLA., *February 19, 1902.*

Hon. DENNIS T. FLYNN,

Delegate, House of Representatives, Washington, D. C.

DEAR SIR: We beg to invite your attention to bill offered in the House by Mr. Corliss, of Michigan, and similar bill presented to the Senate by Mr. Nelson, of Minnesota, based upon the recommendations of President Roosevelt, conferring upon the Interstate Commerce Commission increased powers with respect to regulating rates for transportation and enforcing their rulings on same.

The milling interest of Oklahoma, which if properly fostered is just in its infancy, is vitally interested in this legislation, and we hope you will find it consistent and possible to work for and support these bills as energetically and enthusiastically as you have all other measures looking to the welfare of Oklahoma. Below will be found some figures upon which we base the statement that our Territory has been grievously discriminated against during the past year in that extra-

ordinarily low rates have been made on wheat while but slight concessions have been granted on flour, thus making it possible for the grain exporters to denude the Territory of its milling stocks to the great detriment of the Oklahoma mills.

In the first eight months of 1900, this country exported 58,856,100 bushels of wheat, and 12,256,097 barrels of flour, a percentage of 50 per cent in flour.

In the first eight months of 1901 we exported 123,290,843 bushels of wheat and 12,795,453 barrels of flour, a percentage of 33 per cent in flour.

Railroad men say this shrinkage in the flour per cent is owing to the fact that the extra demand for wheat comes from such countries as France, Germany, Italy, etc., which do not permit American flour to enter.

All right, but here is a statement of exports to Great Britain. In the first eight months of 1899 we exported to Great Britain:

| | | |
|--------------------------|------------|------------|
| Wheat..... | bushels.. | 40,963,927 |
| Flour | barrels.. | 7,213,856 |
| Percentage of flour..... | per cent.. | 42 |

In the same months of 1900:

| | | |
|--------------------------|------------|------------|
| Wheat..... | bushels.. | 39,681,276 |
| Flour | barrels.. | 6,507,401 |
| Percentage of flour..... | per cent.. | 43 |

In the same months of 1901:

| | | |
|--------------------------|------------|------------|
| Wheat..... | bushels.. | 57,169,198 |
| Flour | barrels.. | 7,247,687 |
| Percentage of flour..... | per cent.. | 36 |

This shows an enormous falling off in flour exported during the past year as compared with corresponding years, and in proof of our assertion that this is entirely due to the discrimination in favor of wheat as against flour, we refer to the Commission's report, as sent to Congress, of the hearing had at Kansas City on January 9, 1902, where it was freely admitted by traffic officials of the various lines interested as well as representatives of the grain exporters, that grain had been shipped at a reduction of from 5 to 10 cents per hundred pounds from published tariffs.

The milling industry of our Territory is the most important of all the manufacturing enterprises we have, and if given the same advantages in the way of rates that are accorded the raw material the mills of Oklahoma can make for themselves and for the Territory a world-wide reputation. They employ much capital and labor and are a potent factor in the development of the country, and all Oklahomans cherish a pardonable pride in these growing institutions, but in order that the milling industry may be fostered and these enterprises not blasted forever, it is necessary that they receive some consideration at the hands of the railroad companies.

We hope and believe that the Interstate Commerce Commission, if endowed with the powers which it is sought to confer upon them by the bills above referred to, will take immediate steps to bring about a readjustment of the traffic arrangements which have so seriously handicapped our business the past year, and without doing any injustice to any section or line of business, make it possible for us to regain the ground we have lost in the foreign markets on our flour, and again

make the spectacle of Oklahoma brands a familiar one in the marts of the Old World.

Again hoping that you will be able to lend material assistance to the movement and promising you all the support possible at this distance, we are,

Very truly, yours,

BLACKWELL MILLING AND ELEVATOR CO.,
Per C. W. BLEULER.

ATLANTA CHAMBER OF COMMERCE.

ATLANTA, GA., *April 16, 1902.*

Hon. W. C. ADAMSON,

House of Representatives, Washington, D. C.

DEAR SIR: I have your favor of the 14th instant, and thank you for the opportunity of placing before the Committee on Interstate and Foreign Commerce the facts of the situation at Atlanta.

Atlanta probably suffers more from discrimination in freight rates than any city of its size and importance in the United States. This city is 1,052 feet above the sea level, and rests on the crest of the divide between the watersheds of the Atlantic and the Gulf. The physical topography is very much like that of the freight situation. We suffer in comparison with other cities on freight from the West, and also on freight from the East. For example: Grain dealers in Nashville have a rebilling privilege, which enables them to stop grain and hay en route from the West at Nashville, examine and grade it, and forward to final destination on at through rate, whereas such shipments, if stopped in Atlanta en route from the West, get a through rate only to Atlanta, and thence take a local rate to the final destination. The result of this discrimination has been to transfer a large part of the business in these commodities from Atlanta to Nashville.

In comparison with Savannah, Augusta, and other points in the Southeast, Atlanta suffers severely. Of course, it is to be expected that points on the tide water will receive lower rates than inland cities, but this matter has gone to an unwarranted extreme. For example, the rate on window glass from Pittsburg to Savannah is 31 cents per 100 pounds; the rate on the same commodity from Pittsburg to Atlanta, up to a few months ago, was 66 cents per 100 pounds. There has been a reduction from 66 cents to 57 cents, and more recently to 53 cents, per 100 pounds; but the disparity is still so great that the Pittsburg Plate Glass Company, which does an immense business, and had established Atlanta as its Southern headquarters, intending to manufacture mirrors here for the whole of the Southeast, has been compelled to transfer its manufacturing department, with a pay roll of about \$1,000 per week, to Savannah. Thus an Atlanta industry gives Savannah about 50 or 75 hands and a population of from 300 to 500 on account of this discrimination.

I could name a half dozen other Atlanta concerns which have been forced to establish warehouses at Savannah and other seaports in order to handle heavy goods.

The Pittsburg concern to which I allude was willing to stand a differential of 14 cents in favor of Savannah, because Atlanta's central

position gave it sufficient advantage as a distributing point to overcome this difference in the through rate, but the present difference is such as to force an important industry away from us.

Thus Atlanta keeps the rails hot for hundreds of miles around here with business which the railroads do not allow to come through this city.

Atlanta's progress continues in spite of this heavy handicap. This is the natural distributing point of the Southeast.

I have compiled a table of all the towns in North Carolina, South Carolina, Georgia, Alabama, and Mississippi with 4,000 population, and have put the distance of each from the four markets, Atlanta, Savannah, Nashville, and Birmingham. The average distances of these 78 towns from the four cities are as follows:

| | Miles. |
|------------------|--------|
| Atlanta | 280.8 |
| Savannah | 360.6 |
| Nashville | 450 |
| Birmingham | 319 |

The importance of Atlanta as a distributing point is indicated by the postal receipts of Southern cities, namely:

| | |
|-------------------------|--------------|
| Louisville, Ky. | \$423,392.79 |
| New Orleans | 415,614.11 |
| Atlanta | 265,091.78 |
| Richmond | 213,902.29 |
| Nashville | 194,448.87 |
| Charleston, S. C. | 79,716.66 |
| Wheeling, W. Va | 78,128.65 |
| Jacksonville, Fla. | 67,220.05 |
| Mobile, Ala. | 64,048.13 |
| Wilmington, N. C. | 35,240.11 |
| Vicksburg, Miss. | 26,131.68 |

Inclosed I hand you a table showing the rate per 100 pounds on boots and shoes from Boston to Atlanta and other Southern points, and in comparison therewith the number of cases of boots and shoes shipped from Boston to each of these cities during the five weeks ending February 1, 1902.

You will see that Atlanta is far in the lead of Southern cities during that period in the shoe business, and yet you will notice several of the markets, more remote than Atlanta, which enjoy as low, or a lower rate than this city, while a place like Nashville, which is farther inland, has an advantage over Atlanta to the extent of 23 cents per 100 pounds.

In this connection I call your attention to the fact that while Savannah, by a combination of water and rail rates from Pittsburg, enjoys a rate of 31 cents per 100 pounds on window glass against 57 from here, Atlanta, on shoes from Boston coming through Savannah, and only 294 miles by rail, has to pay 23 cents per 100 pounds more than Nashville, which is 289 miles farther from the sea than Atlanta. It is admittedly cheaper to haul 300 miles by rail and 700 miles by water from Pittsburg to Savannah than it is to haul 800 miles by rail from Pittsburg to Atlanta, but the same rule is not applied in the case of Nashville on goods coming from Boston. In that case Atlanta should have a lower rate than Nashville, because Nashville is about twice as far from the sea, and it costs more to haul goods 300 miles by rail than it does to haul them 1,000 miles by water.

I could worry you with numberless cases showing gross discrimi-

nation against Atlanta, but it is only necessary to refer to the freight tariffs, which are full of them.

I only go into this just enough to suggest the serious nature of the difficulties under which we labor and the urgent necessity for some power in the Interstate Commerce Commission to correct inequalities in freight rates. The people of Atlanta seek no advantage over other markets. By their indomitable energy and superior ability they have been able to forge ahead in spite of this heavy handicap. But I have given you instances showing that it is a handicap, and that a considerable amount of business has been forcibly taken from us by freight discrimination. The Interstate Commerce Commission has frequently found such discriminations against other towns and cities in this section, notably in the Social Circle case, which was fought all the way to the Supreme Court of the United States by the late N. J. Hammond, on the side of the people, and Mr. Baxter for the railroads, but, as the Commission itself states, its labors are in vain without the power to specify what correction should be made in cases of discrimination and the power to enforce its rulings when made.

I have written almost entirely about Atlanta, but I am satisfied that almost every town and city of Georgia would have cause for complaint in some particular, and it would not be a movement by any means in the interest of Atlanta, as against other cities, to lodge in the Commission the power it asks.

I had hoped that our chamber of commerce might be represented before your committee, but the time is too short to induce representative men to leave their business for a trip of that length.

Assuring you that the people of Atlanta will appreciate anything you can do for them in this respect, I am,

Yours, very truly,

W. G. COOPER, *Secretary.*

Rates from Boston.

| To— | Rate per 100 pounds on boots and shoes. | Number cases boots and shoes shipped from Boston during 5 weeks ending Feb. 1, 1902. |
|-------------------------|-----------------------------------------|--------------------------------------------------------------------------------------|
| Atlanta | \$1.14 | 11,963 |
| Augusta | .96 | 774 |
| Birmingham | 1.14 | 336 |
| Brunswick | .754 | |
| Columbus | 1.14 | 397 |
| Charleston | .70 | 2,506 |
| Chattanooga | 1.14 | 1,214 |
| Jacksonville, Fla. | .73 | 485 |
| Knoxville | 1.00 | 4,704 |
| Macon | 1.09 | 1,500 |
| Memphis | 1.00 | 3,873 |
| Mobile | .75 | 1,355 |
| Montgomery | 1.14 | 747 |
| New Orleans | .96 | 8,294 |
| Nashville | .91 | 8,093 |
| Selma | 1.14 | |
| Rome | 1.14 | 470 |
| Vicksburg | 1.04 | 103 |

EXTRACTS FROM REPORTS OF INTERSTATE COMMERCE COMMISSION BEARING UPON CHANGES IN RAILROAD RATES.

"The pooling system was looked upon with distrust by the public mainly because it seemed to be a scheme whereby competition between the roads could be obviated and rates for railroad service put up or kept up to unreasonable figures. But if railroad managers supposed that by this scheme they were to stop competition among themselves the result has not answered their expectations. The competition has still gone on; each road striving to obtain as large a share of the business as possible, and no agreement among them could altogether prevent a yielding to the pressure of shippers for lower rates.

"In 1877, when the pooling system was put in force by the Trunk Line Association, the rates charged on the first, second, third, and fourth classes of freight from New York to Chicago were, respectively, 100, 75, 60, and 45 cents per hundred pounds. They are now 75, 65, 50, and 35 cents, but the classifications as to many articles has in the meantime been reduced, so that the actual reduction is greater than these figures would indicate. Rates from Chicago to New York are also proportionately less." (First annual report, 1887, p. 34.)

"The tendency of rates has been downward, and they have seldom been permanently advanced except when excessive competition had reduced them to points at which they could not well be maintained." (First annual report, 1887, p. 42.)

"What has been here given will show conclusively that the tendency of freight rates throughout the country is downward, and that this tendency is largely due to the act to regulate commerce." (These lines conclude the "Report upon the changes in freight classifications and freight rates of the railways of the United States," compiled by Auditor McCain, fourth annual report, 1890, p. 229.)

"It was clearly demonstrated" (in Auditor McCain's report, referred to above as embraced in fourth annual report) "that from year to year there had been material reduction in the actual rates, and that the enlargement and extension of freight classification had produced important reductions in the charges upon classified traffic.

"During the current year the Commission, in compliance with a request from the Committee on Finance of the United States Senate, directed its auditor to undertake the collection of statistics showing the changes in transportation rates charged throughout the United States on the more important articles of commerce from the earliest period for which it was possible to obtain such data to the present time. This investigation probably involves a wider range of inquiry than has heretofore been undertaken for the same purpose. The report will contain voluminous tables and necessarily will be of such length as will preclude its publication as a part of the Commission's report. The Commission is advised, however, that it is to be included in the report of that committee to the Senate upon the subject of prices and wages.

"The report of the investigation will be interesting and instructive as presenting a very full history of the changes in transportation charges throughout the United States. A material and constant decline is observed both in the rates and classifications prescribing rates. This result appears to be universal, and, as stated in one of our

former reports, the minimum has not yet been reached." (Sixth Annual Report, 1892, pp. 21, 22.)

"While all these expectations have not been fully realized, the operation and administration of the statute have nevertheless brought about reforms in transportation which, compared with the evils that existed prior to the law, amount to commercial emancipation. To-day extortionate charges are seldom the subject of complaint." (Seventh Annual Report, 1893, p. 12.)

"As an appendix to its Fourth Annual Report, the Commission published an elaborate and comprehensive paper, prepared by its auditor, in which an effort was made to present, statistically, a complete exposition of the more important changes in freight rates that had taken place since the passage of the act to regulate commerce. As then summarized, the result of these changes was stated as follows:

"Where changes of any importance have taken place in the freight rates of any section, either for local or competitive traffic, in nearly all cases lower rates are now charged than prior to the act to regulate commerce."

"Subsequently a more extended inquiry concerning the rates charged for railway freight transportation covering a period of forty years, from 1852 to 1892, was undertaken by the Finance Committee of the United States Senate, Fifty-second Congress, and was placed in charge of the auditor of the Commission. The results of this investigation fully justified the statement above made."

Then follows a brief résumé of the figures in the Finance Committee's report to the Senate, in the course of which the Commission uses the following language:

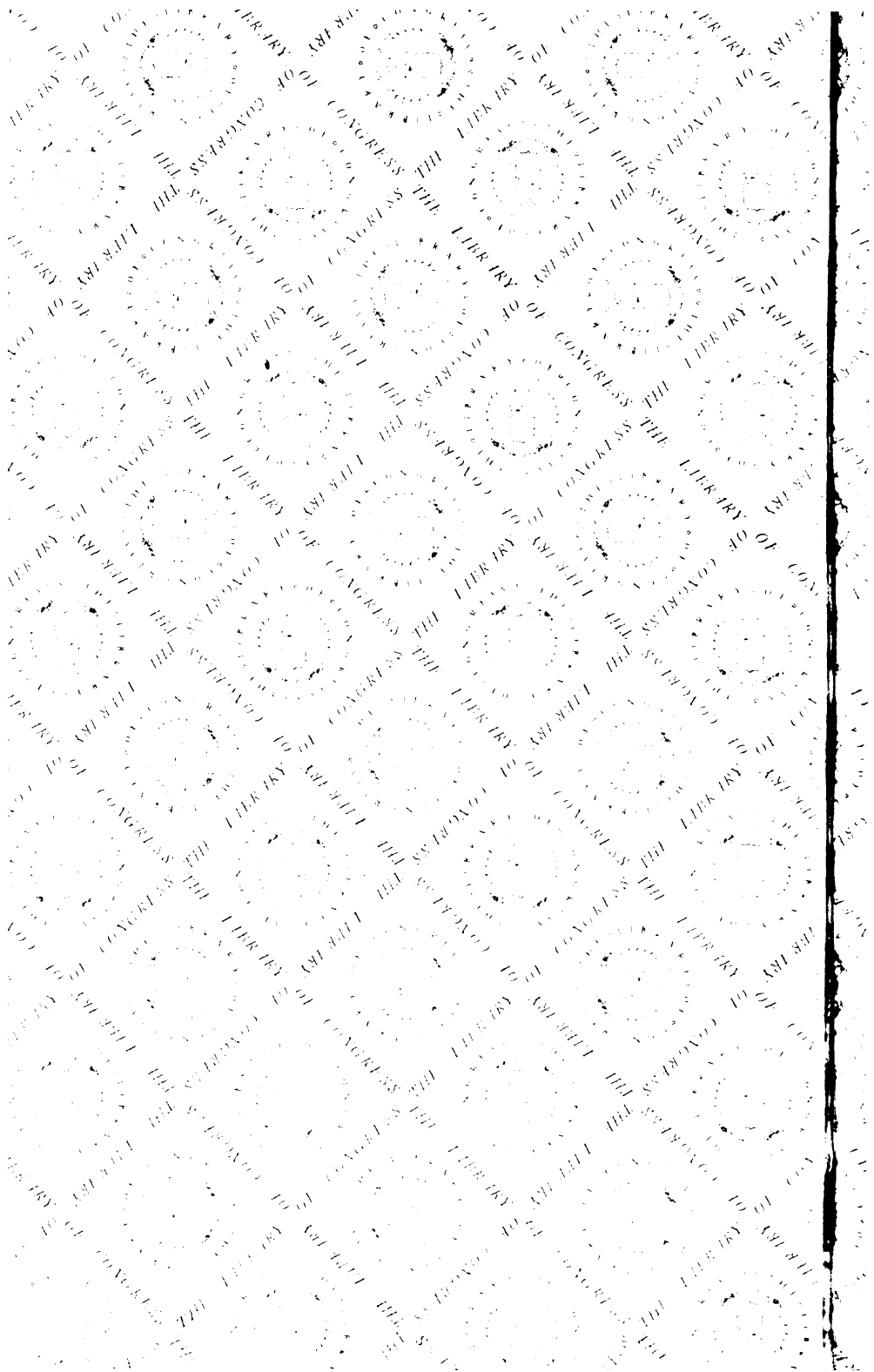
"It is impracticable to present here sufficient examples to illustrate the extended reduction shown by that report, and it will probably suffice to say that they cover the entire country and include all important articles commonly offered for shipment by rail." (Eighth Annual Report, 1894, pp. 49, 50, 51.)

Commencing with its annual report of 1895, the Commission began to ask that the rate-making power be conferred upon it, and from that time seems to have refrained from commenting upon further reductions in rates. The Commission does not, however, claim that there have been any advances in rates, except that in its reports for 1899 and 1900 it comments at length on certain increases in rates by changes in classification, and implies that they were without justification. But the Commission refrained from exercising the power, which if those changes were unjustifiable it was both its right and its duty to exercise, of declaring them unlawful and taking steps to prevent their continuance.

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